

Exhibit B

Transcript of the Deposition of Richard Levin, Esq. taken on May 16, 2014

Picard v. JPMorgan

Richard Levine 5-16-14

1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

SECURITIES INVESTOR PROTECTION
CORPORATION,

No. 08-01789 (SMB)

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

-----x

In Re:

BERNARD L. MADOFF,

Debtor.

-----x

IRVING H. PICARD, Trustee for the
Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff
Investment Securities LLC and
Bernard L. Madoff,

Adv.Pro.No.

10-4932 (SMB)

Plaintiff,

v.

JPMORGAN CHASE CO., JPMORGAN CHASE
BANK, N.A., J.P. MORGAN SECURITIES
LLC and J.P. MORGAN SECURITIES LTD.,

Defendants.

-----x

Deposition of:
RICHARD LEVIN, ESQ.
May 16, 2014

1 DEPOSITION of RICHARD LEVIN, ESQ., as
2 reported by NANCY C. BENDISH, Certified Court
3 Reporter, RMR, CRR and Notary Public of the States
4 of New York and New Jersey, at the offices of BAKER
5 HOSTETLER, 45 Rockefeller Plaza, New York,
6 New York on Friday, May 16, 2014, commencing at
7 11:06 a.m.

8
9
10 A P P E A R A N C E S:

11
12 BAKER HOSTETLER, LLP
13 45 Rockefeller Plaza
 New York, New York 10111
14 BY: DAVID J. SHEEHAN, ESQ.
 SEANNA BROWN, ESQ.
 MARC E. HIRSCHFIELD, ESQ.
15 For Irving H. Picard, Trustee
16 for the Liquidation of BLMIS

17 CRAVATH, SWAINE & MOORE, LLP
18 Worldwide Plaza
 825 Eighth Avenue
19 New York, New York 10019
 BY: DAVID GREENWALD, ESQ.
 YAW A. ANIM, ESQ.
20 For Optimal Funds

21 O'MELVENY & MYERS, LLP
22 Times Square Tower, 7 Times Square
 New York, New York 10036
23 BY: EMILY R. CHEPIGA, ESQ.
24 For Solus Recovery Fund
25

I N D E X

WITNESS PAGE

RICHARD LEVIN, ESQ.

Examination by Mr. Sheehan 4

E X H I B I T S

IDENT. DESCRIPTION PAGE

**T-1 Limited Response of SPV Optimal SUS Ltd
to the Proposed Settlement Agreement
between the Trustee and JPMorgan
Chase & Co., et al. 25**

T-2 Draft Settlement Agreement, 4/13/09. 43

T-3 Draft Settlement Agreement, 5/04/09. 45

T-4 Emails and Settlement Agreement. 46

T-5 Declaration of Richard Levin. 63

1 R I C H A R D B. L E V I N, ESQ., sworn.

2 EXAMINATION BY MR. SHEEHAN:

3 Q. Good morning, Mr. Levin. How are you
4 today?

5 A. Good morning, Mr. Sheehan. I'm fine,
6 and you?

7 Q. Very well, thank you very much.

8 A. Glad to hear.

9 Q. By whom are you employed?

10 A. I'm not exactly employed. I'm a
11 partner in Cravath Swaine & Moore, LLP.

12 Q. So you're a shareholder?

13 A. No, I'm a partner.

14 Q. Partner.

15 A. So I don't consider myself employed
16 by them. But I am a partner in that firm.

17 Q. And how long have you been a partner?

18 A. Just under seven years.

19 Q. And where were you before you were
20 with Cravath?

21 A. Skadden Arps Slate Meagher & Flom,
22 LLP.

23 Q. And how long were you there?

24 A. Ten years. Just under ten years.

25 Q. And in those prior 16 years, what was

1 your major area of practice?

2 A. I'm sorry, in those prior --

3 Q. 16 years working at Skadden and --

4 A. Not prior to that, okay.

5 Bankruptcy and restructure.

6 Creditors' rights, insolvency.

7 Q. Now, did you have anything to do with
8 the writing of the Bankruptcy Code?

9 A. I did.

10 Q. And what did you do?

11 A. I was a member of the staff of the
12 House Judiciary Committee Subcommittee on Civil and
13 Constitutional Rights from 1975 to 1978. My
14 principal work for the almost three years that I was
15 there was as the majority staff on the writing of
16 the Bankruptcy Code. And I was the principal
17 drafter, but it was a bipartisan effort and there
18 was a minority counsel who worked -- he and I worked
19 very closely together and we drafted and edited each
20 other's work.

21 Q. Would it be a fair statement that you
22 have an intimate knowledge of the Bankruptcy Code as
23 a result of that experience?

24 A. In part, yes.

25 Q. What part would be not so intimate?

1 A. The Bankruptcy Code has changed a lot
2 in 36 years. And my intimate knowledge of the later
3 part of the code is not as a result of that
4 experience.

5 Q. Okay. Now, we're here talking about
6 the equal treatment clause and a certain settlement
7 agreement in which you participated; is that
8 correct?

9 A. That's what I understand the subject
10 to be.

11 Q. Okay. And who is your client?

12 A. In this connection right now my
13 client is SPV Optimal SUS, Ltd.

14 Q. Would it be okay if I just called
15 them Optimal?

16 A. You can call them what you want, it's
17 okay with me, but I will tell you that there are
18 several Optimal entities, and if you want to talk
19 about my current client, it would be clearer if you
20 refer to them as SPV.

21 Q. Okay. Your client at the time of the
22 settlement with the Trustee that is the subject of
23 today's deposition, is that Optimal?

24 A. It was a different entity. And I
25 should point out that SPV is not actually owned by

1 the same owners as my client at the time of the
2 settlement. My client at the time of the settlement
3 was two entities. One was called Optimal Strategic
4 US Equities, Ltd., and the other was called Optimal
5 Arbitrage, Ltd.

6 Q. What I'm trying to get at is, I
7 realize, by virtue of your testimony just now, that
8 there are multiple entities that may be involved
9 here through successor and other variations. What I
10 want to do is get a term that we can use, so you
11 understand, with regard to who you were representing
12 at the time of this settlement with the Trustee, and
13 I want to be able to call them Optimal if I can; and
14 would that be something we can agree upon?

15 A. If you want to refer to the two
16 entities that I just referenced, yes, we could call
17 them Optimal collectively.

18 Q. Fine.

19 A. But if we refer to one or the other,
20 then I need to use one or the other name.

21 Q. All right. Directing your attention
22 to the beginning of the year 2009, were you engaged
23 by Optimal to represent them in connection with the
24 BLMIS liquidation?

25 A. Yes. Well, my firm was engaged and I

1 worked on it for my firm.

2 Q. Is Optimal your client?

3 A. It is the firm's client, yes.

4 Q. Had you done work for Optimal prior
5 to this?

6 A. No.

7 Q. And what did you understand to be the
8 nature of Cravath's retention with Optimal?

9 A. To advise it with respect to its
10 investments in BLMIS.

11 Q. And as part of that engagement, did
12 you analyze those investments in BLMIS?

13 A. Analyze is a very broad word. I'll
14 give a general answer --

15 Q. That would be fine, thank you.

16 A. Yes. But if you don't -- if you want
17 to be more specific, then I can tell you. But
18 generally, yes, I analyzed them.

19 Q. Did you analyze those investments in
20 BLMIS to the extent of what the nature of the
21 Trustee's claims might be against Optimal?

22 A. Yes.

23 Q. And did you advise them of what the
24 nature of those claims might be?

25 A. Yes.

1 Q. Did there come a time when you
2 recommended to your client that you reach out to the
3 Trustee to settle those claims?

4 MR. GREENWALD: I instruct him not to
5 answer.

6 A. Yes. That's privilege.

7 Q. The fact of it I don't think is
8 privilege.

9 A. You asked what I recommended.

10 MR. GREENWALD: You asked what he
11 recommended.

12 Q. Okay. Did there come a time -- it's
13 not that important. Jousting over silly stuff. I'm
14 not looking for a waiver of the privilege here.

15 Did there come a time when you
16 recommended to your client that you engage in
17 settlement negotiations?

18 A. I won't answer that question.

19 Q. How did it come about that you called
20 the Trustee to engage in settlement negotiations?
21 Was it unauthorized?

22 A. It was authorized.

23 Q. By the client?

24 A. Yes.

25 Q. Because you asked him?

1 A. I won't answer that part of the
2 question.

3 Q. Okay. So, did the client direct you
4 to engage in settlement negotiations?

5 A. Yes.

6 Q. Okay. Now, did you initiate the
7 settlement negotiations?

8 MR. GREENWALD: Object.

9 A. You're going to have to be more
10 specific in your question. I don't fully understand
11 it.

12 Q. Settlement negotiations began,
13 someone made a phone call. Did you make a phone
14 call to start the settlement negotiations?

15 A. Yes.

16 Q. Thank you. We can be a little bit
17 more... I think, don't you?

18 A. I don't know where you're going and I
19 want to be careful.

20 Q. All right. Well, now I understand
21 where we're going today, fine. So now I'll be very
22 precise.

23 When you called the Trustee's office
24 to start the settlement negotiations, who did you
25 call?

11

1 A. I think I called Mr. Hirschfield, I
2 think that was my first call. I knew he was here, I
3 had had a prior relationship with him, I figured
4 that was a way to open a discussion.

5 Q. And what did you say to him?

6 A. I don't remember exactly, but
7 generally it was, we'd like to come talk to you
8 about an offer. I think at that point the Trustee
9 had made a demand.

10 Q. Right.

11 A. For return of -- made a demand on
12 avoiding power claims. I think I said to
13 Mr. Hirschfield, we'd like to talk to you about a
14 possible resolution of this. I don't remember the
15 exact words or how I phrased it.

16 Q. Do you recall how that demand was
17 presented to your client?

18 A. Yes. I think there was a letter. I
19 have not gone back and checked the file, but there
20 was correspondence from the Trustee in February
21 2009. I do remember that. I haven't looked at it,
22 but I do remember that there was a letter seeking
23 informal discovery, seeking information. I don't
24 remember if there was also a demand in that letter
25 or if it was a separate letter.

1 Q. Do you know Irving Picard?

2 A. Yes.

3 Q. How do you know him?

4 A. I met Mr. Picard when I was on House
5 Committee staff and he was the general counsel for
6 the Division of Regulation of the Securities &
7 Exchange Commission. The Division of Regulation at
8 the time supervised Chapter 10 proceedings under the
9 Bankruptcy Act and so the SEC had an interest in the
10 legislation and he was one of their principal point
11 persons on it.

12 Q. From that point forward, did you have
13 any kind of relationship with Mr. Picard?

14 A. Casual friendly relationship.
15 Professional occasional lunches, you know,
16 nothing -- no -- we weren't personal friends outside
17 of the professional. But we had a nice
18 relationship. We talked from time to time, we'd see
19 each other at conferences, we'd have lunch together
20 occasionally.

21 Q. Did your relationship with Mr. Picard
22 come up in your initial conversation with
23 Mr. Hirschfield?

24 A. I suspect it did.

25 Q. You mentioned that you knew him?

1 A. Well, I might have, yeah. I don't
2 know if I did or not, but it wouldn't surprise me if
3 I did.

4 Q. And why would you have done that?

5 A. In my view the bankruptcy community
6 is a very small community, and we -- many of us know
7 each other. Many of us have worked together
8 professionally or through organizations, Bar
9 organizations and the like. And personal
10 relationships count for a lot in getting work done.
11 They are useful in showing credibility and bona
12 fides, and they facilitate constructive discussions.

13 Q. So you saw the relationship you had
14 with Mr. Picard as a positive factor in these
15 negotiations?

16 A. Yes.

17 Q. Thank you.

18 When you called Mr. Hirschfield, did
19 you discuss at that time what the potential claims
20 might be by the Trustee against Optimal?

21 A. I don't remember.

22 Q. What was your understanding at that
23 time of what the potential claims against Optimal
24 might be?

25 MR. GREENWALD: I think this goes to

1 work product, so we'll --

2 THE WITNESS: Yeah. I wasn't sure
3 about that.

4 Q. Let me try to rephrase it then.

5 Did there come a time when you
6 articulated to the Trustee's counsel what you
7 understood to be the Trustee's claims?

8 A. I think so, but I don't remember
9 specifically. I remember they were a subject of
10 discussion between us at some point.

11 Q. Right.

12 A. And they may have been a subject of
13 discussion either in that first phone call to
14 Mr. Hirschfield or in the first meeting we had in
15 late March 2009. Hard to have a discussion about
16 settlement if you don't know what the claims are, so
17 I'm sure they were on the table in one direction or
18 the other.

19 Q. I agree with that. Thank you.

20 So as best you can recall March of
21 '09, what were the nature of the claims that were
22 discussed between you and Trustee's counsel?

23 A. There were withdrawals by the two
24 Optimal entities. We refer to them as SUS and
25 Arbitrage. They're referred to that way in the

1 settlement agreement.

2 Withdrawals by SUS and Arbitrage from
3 their BLMIS customer accounts in the 90 days before
4 the bankruptcy, before the SIPA proceeding.

5 Q. Right.

6 A. Those were the claims.

7 Q. Okay. Now, in your declaration you
8 talk about the fact that when you settle early, you
9 think that there should be a discount, or that's
10 common practice?

11 A. Yes.

12 Q. Is that fair?

13 A. Yes.

14 Q. Is that why you called
15 Mr. Hirschfield?

16 A. That is -- that's just too general a
17 question to answer yes or no.

18 Q. Well, let me rephrase it then, try to
19 make it better.

20 Was one of the reasons that you
21 called Mr. Hirschfield was that your understanding
22 of common practice was if you get in early you get a
23 better deal?

24 A. Yes, that was one of the reasons.

25 Q. Were there other reasons besides

1 that?

2 A. Sure.

3 Q. What were they?

4 A. To prevent the incurrence of enormous
5 litigation fees, discovery disruption, time,
6 resources, all of those things. All the reasons you
7 would normally settle.

8 Why did I call him in March of '09
9 instead of March of '11? Because it was, the reason
10 you stated, it was before discovery had started, it
11 was in response to an informal discovery request,
12 and it was an effort to head off the, what I refer
13 to as the trench warfare of that kind of litigation
14 before it got started.

15 Q. Was part of that also your assessment
16 of the liability of the bank -- of Optimal?

17 MR. GREENWALD: Here too I think it
18 goes to work product.

19 A. I will say it this way.

20 Q. Yes.

21 A. Part of that was my assessment of
22 what the Trustee would assert and probably litigate
23 over. So we didn't have to acknowledge liability to
24 call and say we want to settle.

25 Q. I wasn't asking you for that, so let

1 me try to rephrase it.

2 You've articulated, we've understood
3 to be, your recollection of the discussion of what
4 the nature of the claims were that you saw the
5 Trustee having. Using your bankruptcy experience,
6 how would you characterize those as claims that were
7 brought by the Trustee?

8 A. I would characterize them as
9 difficult to defend.

10 Q. And what were the -- would they be in
11 the nature of a preference?

12 A. Yes.

13 Q. Can you tell me what a preference is?

14 A. A preference is a transfer of
15 property -- a transfer of an interest of the debtor
16 in property to or for the benefit of a creditor, for
17 or on account of an antecedent debt, made within 90
18 days before the date of the filing of the petition
19 that enables the creditor to receive a greater
20 percentage than other creditors of -- than the
21 creditor would have received in a liquidation case
22 under Chapter 7 if the transfer had not been made.

23 Q. Now, in March of 2009, were you aware
24 of what the nature of the BLMIS proceeding was? And
25 I'll break that down. Did you have any

1 understanding that it was a Ponzi scheme?

2 A. Yes.

3 Q. And how did you come about -- come to
4 that understanding?

5 A. I think primarily from press reports.

6 Q. Was that a subject of discussion with
7 Mr. Hirschfield or other counsel?

8 A. I don't remember. It wouldn't
9 surprise me if it were, but I simply don't remember.

10 Q. Is there something called a Ponzi
11 presumption?

12 A. Yes, there is.

13 Q. And what is a Ponzi presumption?

14 A. Ponzi presumption is that any
15 transfer made by the Ponzi schemer is presumed to be
16 made with actual intent to hinder, delay or defraud
17 creditors.

18 Q. Okay. And do you understand the term
19 "fictitious profits" in the context of a Ponzi
20 scheme?

21 A. Yes.

22 Q. What did you understand to be what
23 Optimal had received during the 90-day period?

24 MR. GREENWALD: Optimal -- okay.

25 A. I understood that both -- well,

1 again, we've got two entities here.

2 Q. Yes.

3 A. So I understood that SUS had received
4 what is referred to in this context as return of
5 principal, and that Arbitrage had received
6 fictitious profits.

7 Q. Now, again referring to your
8 bankruptcy expertise, what would the Trustee have to
9 prove in order to achieve a favorable result against
10 Optimal based on your understanding of the claims
11 against Optimal?

12 A. The Trustee would have to prove, if
13 he asserted a preference claim, the seven elements
14 that I recited a moment ago. If he asserted a
15 fraudulent transfer claim, he would have to prove
16 that the BLMIS was a Ponzi scheme and that would
17 entitle him to that Ponzi scheme presumption that
18 you referred to.

19 Q. Based on your analysis of the claims
20 at that time, did you see value as a defense to the
21 preference action?

22 MR. GREENWALD: For value?

23 MR. SHEEHAN: Yeah, for value.

24 A. Yes.

25 Q. In what sense? How could that be?

1 A. The -- I'm sorry, let me -- yes.
2 547(c) (2) provides a defense -- well,
3 back up.

4 Value is not a defense to a
5 preference action because preference presumes that
6 the transfer is in satisfaction of a preexisting
7 debt. So there is value. So value is irrelevant to
8 a preference action.

9 Q. Right. Thank you.

10 A. You're welcome.

11 Q. That's what I thought. Thank you.

12 A. This is like a law school exam.

13 Q. That's where we're going.

14 Is intent of the transferee part of a
15 preference action?

16 A. No. I want to ask you --

17 Q. I'm available to answer questions.
18 It's a friendly deposition.

19 MR. GREENWALD: Screw up our clock if
20 you start asking questions.

21 A. You're asking me as an expert.

22 Q. No, I'm asking you as a highly
23 trained, sophisticated bankruptcy lawyer with an
24 in-depth knowledge of the Bankruptcy Code as a
25 witness what you analyzed these claims to be.

1 A. Fine. In that context, yes, that's
2 fine.

3 Q. I'm not trying to qualify you as an
4 expert although, Richard, I consider you one.

5 A. Well, thank you.

6 Q. Now, the claim eventually was settled
7 for payment of 85 percent of the amount -- well,
8 instead of stating it, I'll ask you: What was the
9 claim eventually settled for?

10 A. 85 percent of the preference amount.

11 Q. And was that the number that was --
12 okay. Who proposed 85 percent?

13 A. I don't remember which side proposed
14 it. I remember there was a negotiation over the
15 number and we agreed on 85 percent.

16 Q. Did you have an opening number as the
17 person who initiated the settlement discussions?

18 A. Yes.

19 Q. And what was your opening number?

20 A. 80 percent.

21 Q. And how did you arrive at that
22 proposal? Let me break that down.

23 MR. GREENWALD: That's also work
24 product.

25 Q. I agree with David it might have that

1 quality.

2 Going back to your declaration, as
3 you stated, it's always good to get in early if you
4 want to settle and get the best result. I may be
5 re -- and if you want to rephrase it or get your
6 declaration, we can read that.

7 A. Yes.

8 Q. You prefer that?

9 A. No, no. I don't think you
10 characterized my statement correctly.

11 Q. Well, let's get it correct. I'm not
12 trying to mischaracterize it.

13 A. I didn't -- the way you phrased it is
14 more general, early in the bankruptcy case or the
15 SIPA proceeding.

16 Q. Right.

17 A. I meant early in the claim process by
18 the Trustee against a particular defendant.

19 Q. Okay. I'm glad you clarified that.
20 Let me ask you a different question.

21 A. By the way, in this case -- when I
22 said generally, because most preference litigation
23 in bankruptcy cases occurs very late in the case.

24 Q. Um-hum.

25 A. In this case it was going to be

1 different. We knew that because the principal
2 assets of the estate were going to be avoiding power
3 recoveries. So in this case, although when I say
4 it's common to get in early and get an advantage for
5 settling early, I meant in a particular adversary
6 proceeding. In this case there were two elements of
7 it, which was early in the SIPA proceeding and early
8 in the claim process.

9 Q. And let me ask two questions based on
10 what you just said.

11 How did you arrive at the conclusion,
12 as you just stated it, that the avoiding powers --
13 avoiding power recoveries were going to be the major
14 asset of the estate?

15 A. Well, largely based on press reports
16 that there was very little money in the, in the
17 debtor's possession or custody, in the debtor's
18 coffers. And it appeared that there were -- the
19 reason it was very little, there had been
20 substantial withdrawals over a period of time and I
21 know that in a Ponzi scheme case the Trustee seeks
22 recovery under the avoiding powers of the
23 withdrawals that have happened over a period of time
24 before the bankruptcy. So it was based on my
25 experience and what little I knew from publicly

1 reported information.

2 When I say press reports, I should
3 say publicly reported information, which may have
4 been court proceedings as well. Because there were
5 some court proceedings at that point. Based on that
6 public information and my experience, it seemed to
7 me that the principal source of recovery would be
8 avoiding power actions.

9 Q. You mentioned also that it wasn't
10 just a stage of the litigation but the stage of the
11 SIPA liquidation proceeding. What was your
12 understanding what the status of the SIPA
13 liquidation proceeding was in March of '09?

14 A. That the Trustee was just getting his
15 arms around the facts and the underlying financial
16 information. I knew he had a list of all of the
17 customers because I was aware that he had sent out
18 demand letters or informal discovery letters. I was
19 aware that he had sent letters to banks that had --
20 to which BLMIS had wired funds for customers, and I
21 think he had publicly stated that they were -- that
22 the Trustee's team was investigating the records
23 which were in a warehouse in Queens, and the records
24 at the Lipstick Building. So he was in the very
25 early stages and had not formally brought any claims

1 yet.

2 Q. I want to shift our attention now to
3 the JPMorgan Chase matter.

4 A. Um-hum.

5 Q. It might be helpful if we actually do
6 go, I think, to your declaration at this point.

7 The objection, I'm sorry. It's your
8 objection I'm going to.

9 A. I don't think we have that.

10 (Exhibit T-1 marked for
11 identification.)

12 Q. Mr. Levin, I direct your attention to
13 page 4 that we just handed you in exhibit marked
14 T-1. I direct your attention further to the chart
15 at the bottom third of that page. Do you see it?

16 A. The table there, yes.

17 Q. Yes, table, I'm sorry.

18 And I'm not suggesting that you have
19 to look at this. I only wanted to present it to you
20 so that -- because I'm going to go through each of
21 the claims. All right?

22 A. Sure.

23 Q. What was your understanding -- first
24 of all, are you familiar with the JPMorgan Chase
25 complaint that the Trustee filed against that bank?

1 A. Generally familiar.

2 Q. Have you ever read it?

3 A. I believe I've read some or all of it
4 at some point in time.

5 Q. It's very long, I know.

6 A. It is.

7 Q. Tolstoy-esque, according to one
8 judge. But, in any event.

9 A. What's that?

10 Q. Tolstoy-esque, according to one
11 judge.

12 MR. GREENWALD: In fairness, it's
13 well written but not that well written.

14 (Laughter.)

15 MR. SHEEHAN: And with that we are
16 all in agreement.

17 Q. So, starting at the top of this, I
18 call it a chart, you're calling it a --

19 A. Table.

20 Q. Table. I'll call it a table.

21 Top of this table there is a -- it's
22 listed banking fees. Do you see that?

23 A. Yes.

24 Q. And when you say 90 days, what are
25 you referring to there?

1 A. This is a shorthand that the Trustee
2 has often used in his pleadings in court to refer --
3 including the complaint against JPMorgan Chase to
4 refer to three different categories of avoiding
5 power claims: Preference claims, which are
6 transfers made within 90 days before bankruptcy.
7 Those are referred to and they're asserted under
8 Section 547 of the Bankruptcy Code for avoiding the
9 transfer, and section 550 to recover the property
10 transferred. The two-year claims -- I'll just go
11 down the table.

12 Q. Sure, of course.

13 A. I assume you're going to ask that
14 anyway.

15 Q. Yes, exactly.

16 A. Two-year claims are claims asserted
17 under section 548(a)(1) of the Bankruptcy Code which
18 is the fraudulent transfer provision and permits the
19 Trustee to reach back two years to avoid fraudulent
20 transfers, and again section 550 for recovery. And
21 six-year claims are those brought under section
22 544(b) of the Bankruptcy Code, which incorporates
23 applicable state fraudulent transfer law by
24 reference, and in New York the Statute of
25 Limitations is six years for such claims, so it

1 allows the Trustee to reach back six years before
2 the petition date, and they're referred to as
3 six-year claims.

4 Q. Okay. Now, in connection with the
5 two-year claims -- well, first of all, let me back
6 up. What do you understand, if you do have an
7 understanding, of the nature of the banking fee
8 claims brought by the Trustee against JPMorgan
9 Chase?

10 A. My understanding is that they were --
11 there were banking fees paid within the 90 days
12 before bankruptcy, or SIPA proceeding. I'll say
13 bankruptcy referring to the SIPA proceeding, even
14 though it's not technically the same.

15 Q. Yes.

16 A. And there were banking fees paid
17 within the two years before the bankruptcy. Based
18 on the Ponzi scheme presumption, any transfer, even
19 for value, even in payment of an ordinary operating
20 expense such as banking fees, could be recoverable
21 as a fraudulent transfer -- could be avoidable as a
22 fraudulent transfer, excuse me -- if made within two
23 years, and that's what I -- that's the claim I
24 believe the Trustee was asserting for avoidance of
25 the banking fees.

1 Q. What did you understand to be, if you
2 had an understanding, of the relationship between
3 JPMorgan Chase and BLMIS?

4 A. I understood that JPMorgan Chase was
5 BLMIS's principal banker.

6 Q. Now, let's focus for a moment on the
7 two-year claims for banking fees. In that situation
8 under the bankruptcy statute, is value a defense?

9 A. It could be.

10 Q. How could that be raised as a
11 defense?

12 A. Under section 548(c) of the
13 Bankruptcy Code, which governs the two-year
14 claims -- to be clear, when I described the three
15 categories earlier, I did not mean to suggest that
16 they were exclusive. They overlap.

17 Q. I understand.

18 A. So a 90-day claim will also be a
19 two-year claim and a six-year claim.

20 Q. Yes.

21 A. They overlap in that direction, not
22 in the other direction.

23 So on the two-year claims, the
24 Trustee would have a claim under -- under section
25 548 and under 544(b). 548 claim, the defendant has

1 a defense under section 548(c) if the defendant took
2 for value and in good faith.

3 Q. And what would that mean in the
4 context of the JPMorgan Chase defense?

5 A. Well, you asked about value. The
6 answer is, if the defendant provided goods or
7 services or money or other value to the debtor and
8 the payment was a repayment of a legally owing
9 obligation, that would constitute for value.

10 Q. Under 548(c), in addition to value,
11 are there other defenses?

12 A. I don't understand your question.

13 Q. Let me just make it plain. Is good
14 faith a defense to a fraudulent transferrer?

15 A. As I said earlier, the defense under
16 548(c) is value and good faith. So good faith alone
17 is not a defense; value alone is not a defense.
18 They have to be together.

19 Q. Okay. In a preference action does
20 either value or good faith have anything to do with
21 it?

22 A. No. Well, let me amend that.

23 Value does not. Good faith might
24 provide a defense, though not by those words. Under
25 547(c)(2), the ordinary course defense, if a

1 transferee takes a transfer in the ordinary course
2 of business for a debt that was incurred in the
3 ordinary course of business, it is an affirmative
4 defense to a preference recovery, but if a
5 transferee was not in good faith, then it would be
6 hard for the transferee to argue that the payment
7 was made in the ordinary course of business.

8 Q. In a Ponzi scheme, does the intent of
9 a transferee in a preference action have anything to
10 do with the Trustee's ability to recover?

11 A. In a preference action, no, because
12 547(c), under the Ponzi scheme presumption, if a
13 Ponzi scheme is proved, 546(c)(2) does not apply
14 because nothing that a Ponzi schemer does is in the
15 ordinary course of business.

16 Q. Thank you.
17 Now, are you familiar with the
18 Trustee versus Katz/Wilpon matter?

19 A. Yes. Generally.

20 Q. Are you familiar with Judge Rakoff's
21 holding with regard to the application of 546(e) to
22 the BLMIS liquidation proceeding?

23 A. Yes.

24 Q. Under his ruling can the Trustee
25 bring a preference action?

1 A. No.

2 Q. And can he bring a six-year action?

3 A. No. Except to the extent it's within
4 the two years.

5 Q. Right. Well, he can certainly bring
6 a two-year action under 546 -- under 548(a)(1)(A);
7 is that not correct?

8 A. Yes.

9 Q. Do you consider that to be a material
10 change in the law since March of '09?

11 A. You ask -- I don't mean to be flip
12 here.

13 Q. That's quite all right.

14 A. But you ask what is a deep
15 jurisprudential question.

16 Q. I ask the right kind.

17 A. Does the law change or does the court
18 rule what the law is and always has been?

19 Q. Ah, indeed.

20 A. And so I can't answer whether it was
21 a change in the law without getting into philosophy,
22 which I'm not an expert in.

23 Q. Well, I guess the simple answer is
24 that in March of '09 the Trustee could have brought
25 a preference action and a six-year action and as we

1 sit here today at the time of the JPMorgan Chase
2 settlement, he could not?

3 A. I don't think that's correct. I
4 would not subscribe to your statement.

5 Q. Okay. And why is that wrong?

6 A. Because if he had brought the action
7 in '09 and it had gone before Judge Rakoff, I
8 presume that Judge Rakoff would have ruled the same
9 way and that action would have been as ineffective
10 as the Katz/Wilpon action.

11 And, yes, he can bring a claim today.
12 We know as a practical matter if he brings it in the
13 Southern District of New York it will be assigned to
14 Judge Rakoff and the ruling will be the same. But
15 if he were to bring it in another district, a
16 different judge might come to a different
17 conclusion. And we know the matter is pending at
18 the Second Circuit and that may resolve it if it
19 doesn't go to the Supreme Court.

20 Q. But in terms of -- oh, let me get
21 back to that later. I want to just get through
22 this.

23 Now, the six-year claim here --
24 strike that.

25 Let me ask you, looking at the table

1 there's a six-year and it refers to a loan
2 repayment.

3 A. Yes.

4 Q. Do you have any understanding of what
5 the Trustee's allegations were with regard to the
6 loan repayment?

7 A. Yes.

8 Q. And what were they?

9 A. That the loan repayment was exactly
10 what it says it is, a loan repayment, but that
11 the -- it is avoidable under Section 544(b) and the
12 New York Uniform Fraudulent Conveyance Action
13 because of the Ponzi scheme presumption that any
14 transfer by a Ponzi schemer is made with actual
15 intent to hinder, delay or defraud creditors.
16 That's my understanding of the basis of his
17 assertion.

18 Q. And as we discussed earlier, the
19 defense is a value and a knowledge would also be in
20 place here as well, correct?

21 A. Yes. The defendant would have those
22 defenses.

23 Q. Let's go down to the term just below
24 that --

25 A. Excuse me.

1 Q. I'm sorry?

2 A. I didn't answer that correctly. Not
3 value and knowledge. Value and good faith.

4 Q. Yes. I was equating the two, and I
5 apologize for that.

6 A. You almost had me.

7 Q. I did. But in any event, let's look
8 at the table where it says subsequent transfers. Do
9 you see that?

10 A. Yes.

11 Q. Before we get into those, can you
12 tell me what your understanding of a subsequent
13 transfer is.

14 A. Yes. It is not a phrase used in the
15 Bankruptcy Code, but it is the general description
16 of -- referring to Section 550(a)(2) of the
17 Bankruptcy Code that permits a Trustee to recover an
18 avoided transfer from any mediate or -- I'm sorry,
19 immediate or mediate transferee, of the initial
20 transferee from whom the Trustee -- against whom the
21 Trustee brought the avoiding power action.

22 Q. And what is your understanding of the
23 Trustee's burden with regard to recovering on a
24 subsequent transferee in terms of his avoiding the
25 initial transfer?

1 A. Well, the law is mixed here. I think
2 the majority view, represented by a Ninth Circuit
3 B.A.P. decision and by Judge Rakoff's decision, and
4 several others, which I don't recall at the moment,
5 is that the Trustee may recover from a subsequent
6 transferee without having obtained an avoiding power
7 judgment against the initial transferee.

8 Q. Does the mediate or intermediate
9 transferee of the initial transferee have the
10 defense of the initial transferee in that context?

11 A. Where the courts have permitted what
12 I just described, the subsequent transferee -- I
13 think that's the easier way to refer to it --

14 Q. Yes.

15 A. -- the subsequent transferee has all
16 of the defenses that the initial transferee would
17 have in the underlying avoiding power action.

18 Q. So would it be fair to state that
19 even against the subsequent transferee, the Trustee
20 has the burden of proving the avoidance of the
21 initial transferee? Initial transfer.

22 A. As a practical matter, yes.

23 Q. Now, what did you understand to be
24 the nature of -- if you have an understanding -- of
25 the Trustee's claims in JPMorgan Chase that related

1 to Fairfield Century?

2 A. That within 60 days before the
3 bankruptcy -- referred to as 90-day transfers but in
4 fact they were within less than 90 days -- in fact,
5 most of them were within 30 days -- that JPMorgan
6 Chase, that an entity within the JPMorgan Chase
7 corporate group -- and I don't remember precisely
8 which entity -- received payments from Fairfield
9 Century and Fairfield Sigma for redemption of its
10 shares in those two funds.

11 MR. SHEEHAN: Can I have that answer
12 read back.

13 (Answer read.)

14 Q. And how did those redemptions relate
15 to JPMorgan Chase?

16 A. I don't understand the question.

17 Q. As I understood your answer, you
18 referred to redemptions by Fairfield from BLMIS.
19 Were you referring to something -- or maybe I didn't
20 understand your answer.

21 A. No. I was referring to the -- and
22 maybe I didn't understand your prior question.

23 Q. Okay.

24 A. I was referring to the payments that
25 Fairfield Century and Fairfield Sigma made to

1 JPMorgan Chase to redeem Chase's shares in those two
2 funds.

3 Q. All right, I'm sorry. I did
4 misunderstand. And what was your understanding of
5 what those redemptions were predicated upon? In
6 other words, what was the investment that JPMorgan
7 Chase made into Fairfield and Fairfield Sigma that
8 resulted in those redemptions?

9 A. I don't remember. I don't recall
10 what the investments were.

11 Q. Did you understand that they were
12 investments by Fairfield into BLMIS?

13 A. Oh. That's not JPMorgan Chase into
14 Fairfield. That's Fairfield into BLMIS.

15 Q. Correct.

16 A. Okay. Yes. I understood that
17 Fairfield Century was, in fact, BLMIS's largest
18 single customer, in terms of account balance.
19 Fairfield Sigma, as I recall, was a feeder fund to
20 Fairfield Century, and did not have a direct account
21 at BLMIS, but I may be mistaken on that one. But
22 one way or the other, both funds were directly or
23 indirectly invested in BLMIS.

24 Q. Okay.

25 MR. SHEEHAN: Take five minutes here.

1 (Recess taken.)

2 Q. Just to stick with the JPMorgan case
3 for a moment, and you don't need the exhibit because
4 I want to go beyond that.

5 Are you aware of any other claims
6 other than the ones that we've just gone through
7 that were outlined in the JPMorgan Chase complaint
8 by the Trustee?

9 A. Yes.

10 Q. And what were they?

11 A. What are loosely referred to as the
12 class action claims, but they were -- in the
13 Trustee's complaint they were asserted as common law
14 claims. I think they were for aiding and abetting,
15 fraud and conspiracy and related claims to that.
16 They're primarily common law claims.

17 Q. And you are aware, I think you
18 referenced that there was a class action that was
19 pending parallel to the Trustee's action, also
20 against JPMorgan Chase?

21 A. Parallel but much later, started much
22 later.

23 Q. Much later, yes. I was actually
24 going to start testifying but, anyway.

25 And you are also aware of the

1 Department of Justice's involvement with the
2 JPMorgan Chase matter as well, are you not?

3 A. Yes.

4 Q. And what's your understanding that to
5 have been?

6 A. There was a criminal investigation by
7 the Department of Justice over Chase's involvement
8 with BLMIS as its banker and in other relationships,
9 resulting in a deferred prosecution agreement.

10 Q. So let's go back to March of '09, if
11 we may. The equal treatment provision that is in
12 the agreement that is the subject of our discussion
13 here today, who first proposed that?

14 A. The Optimal side proposed that.

15 Q. And why did you propose it?

16 A. There were two reasons. One was as
17 a -- at the time, hopefully early settler, we didn't
18 want -- there was no, to use a phrase that's in the
19 settlement agreement, there was no benchmark as to
20 what reasonable settlements were. We didn't want to
21 settle at a percentage of the claim and later find
22 the Trustee settling at lower percentages similar
23 claims, similar circumstances to ours.

24 So, it was protection. I think, as
25 Mr. Hirschfield said in his declaration, protection

1 against looking foolish on our side.

2 Second reason, which was also
3 important, and we argued this in the settlement
4 negotiations, was that it would give the Trustee
5 some leverage in negotiations with other defendants
6 in avoiding power actions, leverage to maintain a
7 minimum settlement percentage amount.

8 Q. Okay.

9 A. And we thought that would be helpful
10 not only to the Trustee but indirectly then to all
11 customers with allowed claims which we had hoped
12 Optimal would be. So it would inure indirectly --
13 directly to the estate's benefit and indirectly to
14 Optimal's benefit.

15 Q. Do you recall the initial reaction of
16 Trustee's counsel to your equal treatment proposal?

17 A. Yes.

18 Q. And what was it?

19 A. Highly skeptical.

20 Q. Could you explain what you mean by
21 highly skeptical?

22 A. The Trustee's counsel, as I recall,
23 expressed concern -- I'm going to use a word that's
24 not the Trustee's counsel's word, my word --

25 Q. I asked for your understanding.

1 A. That it would somehow hamstring the
2 Trustee going forward and it was going to be too
3 limiting and constraining and therefore the Trustee
4 was concerned about putting something in like that
5 that would limit his flexibility and options and
6 such.

7 Q. Um-hum. Did --

8 A. I don't recall if it was in that
9 first conversation or later that there was also the
10 concern expressed about whether the provision could
11 be drafted in a way that would be comfortable for
12 the Trustee. So the two go together very closely.
13 One conceptual and one the mechanics of making it
14 happen.

15 Q. Did the Trustee ever express to you
16 at these early stages of your negotiations the
17 notion that the -- if there was to be an equal
18 treatment clause, it applied only to similar cases?

19 A. Let me first adopt a shorthand
20 convention. You asked if the Trustee did. No, he
21 didn't because he was never at the settlement
22 negotiations.

23 Q. I thought I said counsel; if I
24 didn't, I misspoke.

25 A. I'm going to assume whenever you say

1 Trustee, you mean counsel.

2 Q. Absolutely.

3 A. That was the convention.

4 Q. Fine.

5 A. I don't remember exactly what was
6 said as to the scope of the clause or provision in
7 the settlement negotiations. I only recall what's
8 in the written record back and forth as to the
9 nature of how it would be described.

10 Q. Okay. Let's go to the written record
11 then.

12 A. Sure.

13 Q. Let's go to the initial draft. I
14 believe it's the initial draft. I'll ask you what
15 it is, actually.

16 (Exhibit T-2 marked for
17 identification.)

18 Q. Mr. Levin, the court reporter has
19 handed you what has been marked as T-2, which I
20 believe to be the initial draft of the proposed
21 settlement agreement. Take your time, take a look
22 at it. Could you, for purposes of the record,
23 identify that document for me, please.

24 A. This is what you just characterized
25 it as.

1 Q. Okay. And my characterization was
2 correct?

3 A. Yes.

4 Q. I direct your attention to page 6 of
5 the document, paragraph 12.

6 A. Yes.

7 Q. Do you see the heading there, "Equal
8 Treatment"?

9 A. Yes.

10 Q. I'm going to read it in, for purposes
11 of the record I'm just going to read this in. The
12 heading is "Equal Treatment for SUS and Arbitrage
13 with Other Similar Customers. "

14 Do you see that?

15 A. Yes.

16 Q. Now, is this your language that you
17 put in there or is this the result of negotiation?

18 A. This was the initial draft that came
19 from the Optimal side.

20 Q. Um-hum. And where did this language
21 emanate from? Was this your language?

22 A. I believe so. I was the principal
23 drafter, so I think it must have been, but I can't
24 tell you specifically.

25 Q. Do you recall why you used the phrase

1 "other similar customers"?

2 A. No, I do not recall.

3 Q. Without going through each of the
4 paragraphs A through G, would you agree with me that
5 the term "customer" appears in each one of them?

6 A. Yes.

7 Q. I'm going to go through all three
8 very quickly and then come back to this.

9 A. Okay.

10 Q. I now want to show you the, what I'm
11 going to call the Trustee's version, if you will.
12 T-3.

13 (Exhibit T-3 marked for
14 identification.)

15 Q. Again, for purposes of the record can
16 you identify, if you can, the document T-3 for us,
17 Mr. Levin.

18 A. This appears to be the May 4 draft
19 that Baker Hostetler sent to me in response to -- it
20 was part of the exchange of drafts of the settlement
21 agreement.

22 Q. All right. Now, the heading is the
23 same as it was in your earlier draft, is it not?

24 A. In paragraph 13, 12 of the other
25 draft, yes.

1 Q. Okay. And if you, and take your time
2 to read this, but -- and I'll direct your attention
3 down to, "For purposes of this paragraph." I don't
4 know if you can see that?

5 A. I do.

6 Q. Right after "MFN trigger event," it
7 says: "Similar claim means a claim by the Trustee
8 against a former BLMIS customer," says "the
9 customer" as a defined term and then that term
10 "customer" is used throughout this paragraph, is it
11 not?

12 A. It's not used throughout the
13 paragraph, but for references in the definition of
14 similarly situated person or entity appears to refer
15 to the defined term "customer."

16 Q. All right. Now, let's go to the
17 final version, if we can. The one that was actually
18 executed.

19 What we've done here is we've
20 attached it to the email, which I'm going to also
21 ask you a question about, the email that you sent to
22 us. So it's combined document that I'll ask the
23 witness to identify it after you've marked it as
24 T-4.

25 (Exhibit T-4 marked for

1 identification.)

2 Q. Again, Mr. Levin, take your time to
3 take a look at this but, for the record, I've handed
4 you what purports to be an email from you -- some
5 email correspondence between you and counsel for the
6 Trustee, as well as a new, if you will, version of
7 the equal treatment provision.

8 Just for purpose of the record,
9 Mr. Levin, can you identify for us as you understand
10 it, or what your understanding is of the two
11 documents that are attached to T-4.

12 A. Well, the first part is email
13 correspondence between Mr. Hirschfield and me from
14 March 4th through March -- May, excuse me, May 4th
15 through May 9th. And there is a one-page attachment
16 of a draft equal treatment insert for the settlement
17 agreement.

18 Q. Okay. Turning your attention to the
19 settlement agreement, and particularly the page that
20 has the heading "Draft Equal Treatment Insert for
21 the Picard - Optimal Settlement Agreement."

22 Do you see that?

23 A. Yes.

24 Q. Do you see the heading there on
25 paragraph -- paragraph 13?

1 A. Yes.

2 Q. And it again says, "with other
3 similar customers," does it not?

4 A. Yes, it does.

5 Q. Now, in the body of the language does
6 the word "customer" appear?

7 A. No, it does not.

8 Q. And does the word "defendants"
9 appear? In other words -- let me withdraw that
10 question.

11 Direct your attention to paragraph B
12 little i. It begins with the phrase, and I'm
13 reading now:

14 "If the Trustee settles one or a
15 related series of avoiding power claims against a
16 single defendant or group of defendants --"

17 A. Yes, the word "defendant" clearly
18 appears.

19 Q. Right. You would agree with me,
20 would you not, that prior to this the reference was
21 to customer, both in your first draft and in the
22 draft that was sent by the Trustee, was it not?

23 A. Yes. The paper is clear.

24 Q. Did you, in your transmitting this,
25 identify the fact that you were changing "customer"

1 to "defendants"?

2 A. I did not call it out in the email
3 traffic that accompanied it.

4 Q. Did you ever, in conversation with
5 the Trustee, suggest to them that this was a change?

6 A. I don't recall. I note the email
7 traffic refers to conversations we had over this
8 provision and I recall that we did have some
9 conversation, but I simply do not remember the
10 content of conversations five years ago on this.

11 Q. Is it not true that when you were
12 having these initial discussions and in the first
13 two drafts you were talking about customers, were
14 you not?

15 A. The drafts talked about them. As I
16 said, I don't recall the content of discussions five
17 years ago.

18 Q. Was it not the understanding of
19 everyone when you sent this and retained the heading
20 "Other Similar Customers" that the defendants you
21 were referring to were customers?

22 MR. GREENWALD: Objection.

23 A. Read back the question, please.

24 (Question read.)

25 A. I don't know what the Trustee's or

1 his counsel's understanding was.

2 Q. Would there be any reason for them to
3 think otherwise?

4 A. The language of the provision.

5 Q. Well, you'd retained the heading, did
6 you not?

7 A. Yes, the heading was retained.

8 Q. And it said "other similar
9 customers"?

10 A. Yes, it did.

11 Q. Wouldn't one, having been in these
12 negotiations, with all of the earlier drafts and you
13 not in any way identifying, would you not agree --
14 let me rephrase this.

15 Would you not agree that if you were
16 going to change the term from "customers" to
17 "defendants," that was a material change?

18 A. Yes, it is a material change.

19 Q. Did you identify that in writing to
20 the other side?

21 A. Yes.

22 Q. In writing?

23 A. Yes.

24 Q. How?

25 A. It's right in the draft itself.

1 Q. So, in other words, you didn't think
2 that when they looked at it, and you used the
3 heading "Other Similar Customers," that they thought
4 that that meant the defendants were customers?

5 A. I don't know what they thought.

6 Q. Well, was there some slight of hand
7 here, Mr. Levin?

8 MR. GREENWALD: Object.

9 A. You're arguing with me now. I'm not
10 going to take that bait.

11 Q. All right. Well, in other words, the
12 only thing you have on the record, the entire record
13 here that would suggest that the counsel for the
14 Trustee should know that even though you retained
15 the heading, the fact that you turned it into
16 defendants, that we should have known you meant
17 other than customers?

18 A. Could you read that back.

19 (Question read.)

20 Q. Do you understand the question? I'll
21 rephrase it.

22 A. I got lost toward the end of it.

23 Q. Okay.

24 You send us a document that retains
25 the heading. It's the same heading for all three

1 documents, correct?

2 A. Yes.

3 Q. And it says "other similar
4 customers"?

5 A. Yes.

6 Q. And in the third one you changed the
7 term "customers" to "defendants"; is that correct?

8 A. Yes.

9 Q. And it's your testimony that the
10 Trustee was supposed to divine from your change from
11 "customer" to "defendants" that you meant to change
12 it to defendants other than customers?

13 A. Read that back again.

14 (Question read.)

15 MR. GREENWALD: I'll pose an
16 objection.

17 A. I sent him a document and I
18 assumed -- counsel, a document -- I assumed counsel
19 would read it and read what it said.

20 Q. And it said customers, did it not?

21 A. In one place, and it said defendants
22 in others.

23 Q. Right. So, wouldn't it be fair to
24 assume that the Trustee, without you highlighting
25 this in any way whatsoever, that what you were

1 actually saying is that defendants, meaning
2 defendants who were customers?

3 MR. GREENWALD: Objection.

4 A. I'm not going to say what's fair to
5 assume or not. That's an argument. That's not what
6 I'm here to talk about.

7 Q. I'm here to talk about why you
8 changed it.

9 A. You know, the other --

10 Q. Why did you change it from customers
11 to defendants?

12 MR. GREENWALD: Answer that question.
13 That's fine.

14 A. I was waiting for the question.

15 We had a discussion, I remember we
16 had a discussion because both sides were
17 dissatisfied with the prior two drafts, or one side
18 was dissatisfied with one, the other side with the
19 other.

20 So, according to the email
21 correspondence, and I think it, I believe it to be
22 accurate, since I tended to be the party in the
23 negotiation who -- the Trustee was very busy, as you
24 may recall at the time --

25 Q. We had a few things happening.

1 A. Yes. So I tended to be the person in
2 the negotiation that came up with the proposals for
3 the Trustee to react to, rather than the other way
4 around. And I think I came -- when I saw the logjam
5 on the two prior drafts, I came up with a new
6 proposal and as you'll see from my email, I said to
7 Mr. Hirschfield, I think it would be helpful if we
8 had a discussion before going to the next step.

9 We had a discussion. I don't
10 remember the content of that discussion. The result
11 of that discussion was this draft, which I then sent
12 back, and it says what it says.

13 I do recall, and the paper record
14 shows this as well, that one of the big changes from
15 the prior draft to this draft was to expand from
16 simply preference actions to avoiding power claims.
17 And so it was a broader set of claims that we were
18 covering and that may have been the reason for
19 changing it to defendants.

20 Q. But you never called that to the
21 attention of the Trustee?

22 A. No. I put it in the document. You
23 mean I called him up and said specifically, I want
24 you to notice this? No, I did not call it out
25 specifically. I don't remember any particular

1 conversations we had over it, but the written record
2 is, as you presented to me in T-4, I believe is
3 accurate.

4 Q. Let's go back to the first version,
5 if you will.

6 A. Um-hum. T-2.

7 Q. Direct your attention to paragraph
8 12(b) .

9 A. Yes.

10 Q. Just so we'll have it clear for the
11 record, since I seem to be chowdering things up
12 here, 12(b) reads: "The customer received transfers
13 from BLMIS that are in excess of \$25 million in the
14 aggregate either as fictitious profits (calculated
15 on a cash-in/cash-out basis) or after September 11,
16 2008 and that are recoverable under the Bankruptcy
17 Code section 544, 547, 548 or 550 (the 'Total
18 Recoverable Amount' of the customer)."

19 What was the significance of the date
20 September 11, 2008?

21 A. It was 90 days before the SIPA
22 liquidation proceeding commenced.

23 Q. So what was the purpose of paragraph
24 12(b) ?

25 A. To describe one of the conditions

1 that would have to be satisfied for the equal
2 treatment provision to apply.

3 Q. And what was the condition that 12(b)
4 described?

5 A. You just read it.

6 Q. I understand. Well, let me rephrase
7 it. Is this description one of a preference action
8 for fictitious profits?

9 A. Yes and no. As noted, it could be a
10 preference action in that it was within 90 days, or
11 it could be a fraudulent transfer action.

12 A claim for fictitious profits would
13 not be a preference claim because a fictitious
14 profits payment is not for or on account of an
15 antecedent debt; therefore, it's only a fraudulent
16 transfer claim. So, hence, the references in the
17 latter part of the provision to Sections 544 and
18 548.

19 Q. So those -- just to understand your
20 testimony, is the references to 547 and 548 to the
21 portion of the paragraph that deals with fictitious
22 profits?

23 A. Yes.

24 Q. So the --

25 A. Excuse me. It applies to fictitious

1 profits and it applies to transfers after September
2 11, 2008 because, as I said earlier, the Trustee's
3 avoiding powers are cumulative.

4 Q. So, let me just -- just to finish
5 this discussion or question -- is it fair to state
6 that the two claims that are identified in 12(b) are
7 claims for fictitious profits or preference claims?

8 A. Loosely, yes.

9 Q. Okay. What do you mean by loosely?

10 A. Well, preference claims in this
11 context are also avoidable as fraudulent transfers.

12 Q. Now, going back to the -- let me jump
13 back. If you go back to T-4.

14 A. Sure.

15 Q. I'm directing your attention now to
16 the concerns of the Trustee. Actually I'm directing
17 your attention to the email that you sent to
18 Mr. Hirschfield and Mr. Lucchesi. Do you see that?

19 A. Yes.

20 Q. It's the last one in the chain.

21 A. Yes.

22 Q. It says, "Here's my rough cut." Do
23 you see that?

24 A. Yes.

25 Q. And you state: "I've tried to be

1 accommodating to the concerns that you have
2 previously expressed."

3 What did you understand to be the
4 concerns of the Trustee that you're referring to
5 here?

6 A. Let's see if I can put myself back
7 five years and recall.

8 I don't recall the specific concerns
9 that had been expressed with respect to the
10 differences between the April 13 and the May 4
11 drafts.

12 Q. Yeah.

13 A. All I recall is the general concern
14 that the Trustee wanted a narrower equal treatment
15 provision and Optimal wanted a broader equal
16 treatment provision, and as a negotiator I was
17 sensitive to trying to bridge that gap.

18 MR. SHEEHAN: Can I have that read
19 back, please.

20 (Answer read.)

21 Q. Now, let's go back to the Trustee
22 version, which I think is T-3.

23 A. Yes.

24 Q. Again directing your attention to the
25 portion of paragraph 13 -- do you have that in front

1 of you?

2 A. Yes.

3 Q. -- which reads: "For the purposes of
4 this paragraph, 'similar claim' means a claim by the
5 Trustee against a former BLMIS customer."

6 Do you see that?

7 A. Yes.

8 Q. Would it be a fair statement that
9 that represented a concern of the Trustee?

10 MR. GREENWALD: Objection.

11 A. I have no way of knowing.

12 Q. Well, you say the document speaks for
13 itself when you get it. When you read that, what
14 did it mean to you, when the Trustee says, "'similar
15 claim' means a BLMIS former customer against whom
16 the Trustee has a claim for over \$100 million"?

17 A. Yeah, I read that to mean that the
18 Trustee wanted to limit this equal treatment
19 provision to claims against customers.

20 Q. And did you see that as a material
21 aspect of this?

22 A. I simply don't remember.

23 Q. You don't remember whether that was
24 material to you or not?

25 A. I don't remember. I remember the 100

1 million was material, but I don't remember about the
2 customer.

3 Q. When you sent it back, you changed
4 that term to defendants, did you not?

5 A. Yes.

6 Q. All right.

7 A. Well, when I sent it back -- I
8 quarrel with that a little bit because I didn't just
9 send it back. As I described, I came up with a new
10 concept, we had a conversation about it and then I
11 sent a proposal. So I didn't just send this back.

12 Q. Did you in the conversation say, I'm
13 changing it from "customer" to "defendants"?

14 A. I don't recall that I did. I don't
15 recall that I didn't, but I have no recollection of
16 that conversation.

17 Q. So when you say you were addressing
18 the concerns, did you not think that changing it
19 from "customer" to "defendant" was not addressing
20 their concern?

21 MR. GREENWALD: Objection.

22 Q. Let me back up.

23 A. I understand the question and I'll
24 answer it.

25 Q. Let me go all the way back to the

1 beginning.

2 What was Optimal? Was it a customer?

3 A. Optimal was a customer, yes.

4 Q. Right. And you wanted to get ahead
5 of the game so that you could settle early but not
6 look foolish?

7 A. In colloquial terms, yes.

8 Q. And yo u were talking about other
9 customers, were you not?

10 A. Initially.

11 Q. Yes. And not only initially, was not
12 the Trustee saying similar, meaning customers?

13 A. The Trustee did say that.

14 Q. Right. And when you changed it, you
15 didn't think that was material enough to highlight
16 it to the Trustee that you changed it?

17 A. Let me put it this way. I didn't
18 highlight anything that I changed to the Trustee. I
19 sent a revised draft after a discussion. I didn't
20 say please note this provision, please note that
21 provision, I didn't say any of that. I just said, I
22 tried to be accommodating. That is what a
23 negotiator does.

24 Q. Well then why did you leave in the
25 phrase "other similar customers" in the heading of

1 paragraph 13 on the May 9 draft?

2 A. Ah, that I can answer.

3 Q. Yes?

4 A. Because we all have strengths and
5 weaknesses in drafting. And one of my weaknesses is
6 that I don't pay a lot of attention to section
7 headings. That section heading was in the draft. I
8 left it there. Didn't even think about it.

9 Q. Even though you changed and took
10 "customer" out of the rest of it, you never looked
11 at the heading?

12 A. That -- let me be really clear. I
13 cannot tell you specifically I looked at this, I
14 thought about it, I decided to leave the heading in.
15 But my practice in drafting, and I've learned this
16 from doing it for 35 or 40 years -- closer to 40 --
17 my practice in drafting is I occasionally, more than
18 occasionally, often, once a heading gets set, even
19 though the provision changes, I don't go back and
20 relook at it. And so based on my normal practice,
21 I'm guessing that's what happened here.

22 Q. You don't think that leaving in
23 "other similar customers" was misleading?

24 A. You know, I'm dealing with a very
25 sophisticated law firm. I don't think anything I

1 would do to them that is on paper that they read and
2 they have to sign off on would be misleading in any
3 way.

4 Q. Why would they not have thought that
5 when you said "other similar customers" in the
6 heading, every previous draft had dealt with similar
7 customers, that when you said defendants you didn't
8 mean customers?

9 A. That's an argument and I'm not going
10 to answer it.

11 MR. GREENWALD: Can we take a break?

12 MR. SHEEHAN: Sure.

13 (Recess 10:57-11:05 a.m.)

14 BY MR. SHEEHAN:

15 Q. Mr. Levin, just to turn to a
16 different topic, in your declaration, and we're
17 going to mark that now so you have it in front of
18 you because we're going to ask a series of
19 questions.

20 A. Can I put these away?

21 Q. Yes, you may, absolutely. I think --
22 I don't think we're going back to them, but if we
23 do...

24 T-5.

25 (Exhibit T-5 marked for

1 identification.)

2 Q. I show you, for the record,
3 Mr. Levin, I show you what has been marked T-5 by
4 the reporter. Can you identify that document for
5 us, please.

6 A. Declaration of Richard Levin
7 regarding application of the equal treatment
8 provision to the settlement agreement between the
9 Trustee and JPMorgan Chase & Co. et al.

10 Q. I'm going to direct your attention to
11 paragraph 19 of the declaration. I just have a few
12 questions about it, but you can read the whole thing
13 if you want.

14 A. I am looking at paragraph 19.

15 Q. In there the concept of negotiation
16 leverage is discussed. Do you see that?

17 A. Yes.

18 Q. Does the term "negotiation leverage"
19 appear anywhere in the settlement agreement?

20 A. No, it does not.

21 Q. When you had discussions with counsel
22 for the Trustee during the course of settlement
23 negotiations, was the concept of negotiation
24 leverage discussed?

25 A. I don't recall.

1 Q. Is it a fair statement that the
2 thought or concept of negotiation leverage was in
3 your mind and not discussed?

4 A. It's possible. I just don't
5 remember.

6 Q. Okay. Let's turn to paragraph 21(b).

7 A. I'm there.

8 Q. Again, I'm going to, just for
9 purposes of the record, read in what I want to talk
10 about.

11 If you go down to page 13 and it's
12 the start of the second paragraph. For purposes of
13 the record I'm just going to read it in:

14 "To the best of my recollection,
15 assisted by my review of the earlier drafts, I
16 included the 'nature of the avoiding power claims'
17 factor to identify the difficulty the Trustee might
18 have in pursuing an avoiding power claim against
19 another defendant and, with it, the concomitant
20 reduction of the Trustee's settlement negotiating
21 leverage. If the claim was easier to pursue, such
22 as a 90-day transfer or a fictitious profits
23 transfer, then the Trustee would enjoy more
24 leverage, making the circumstances of any resulting
25 settlement more similar to the circumstances of the

1 SUS and Arbitrage settlement. But if the claim was
2 more difficult to pursue, such as to avoid a two- or
3 six-year transfer that was a return of principal,
4 then the Trustee would have less settlement
5 negotiating leverage, making the circumstances less
6 similar."

7 Do you see that?

8 A. I do.

9 Q. Would you not agree with me that the
10 Optimal claim in issue was a 90-day transfer or a
11 fictitious profits transfer?

12 A. The Optimal transferrers were either
13 a 90-day or a fictitious profits transfers.

14 Q. And that the claims that the Trustee
15 had against JPMorgan Chase, although there were
16 certain portions of it that were in the 90-day
17 realm, that the vast majority of it was either a
18 subsequent transfer or a two- or six-year transfer?

19 A. Subsequent or two- or six-year, yes.

20 Q. So based on your paragraph, wouldn't
21 the Optimal -- would not the JPMorgan Chase fall
22 outside of the equal treatment clause?

23 A. Not necessarily, no. It would have
24 fallen out had there been express conditions as in
25 the April 13 and May 4 drafts, but in the final

1 draft that the Trustee agreed to, which listed
2 factors and looked more generally to similar
3 circumstances rather than to express conditions,
4 such as was it a 90-day transfer or not, was it
5 fictitious profits or not. Since it is written more
6 broadly, it does not necessarily fall outside.
7 That's what this dispute is about, is whether -- let
8 me say it this way.

9 The equal treatment provision applies
10 to, quote, qualifying settlements, close quote,
11 defined term. The JPMorgan Chase settlement is a
12 qualifying settlement. So it falls within the equal
13 treatment provision.

14 Whether the circumstances are similar
15 or not similar is a question of whether the --
16 whether the Trustee is required to provide a refund.
17 Not a question of whether it falls within the equal
18 treatment paragraph.

19 Q. My question, though, is this: This
20 declaration represents your thinking about -- you're
21 stating what the negotiations represented and your
22 understanding of the agreement. Is that not
23 correct?

24 A. Yes.

25 Q. And your understanding is, that if

1 you have a fictitious profits or 90-day claim,
2 that's much more similar to Optimal than a two- or
3 six-year or subsequent transferee claim; is that not
4 correct? You say less similar.

5 A. That particular claim -- well, I
6 didn't say the claim was less similar. I said the
7 circumstances were less similar.

8 Q. Uh-ha. So, you'd have to take into
9 account, therefore, all the circumstances
10 surrounding the claim?

11 A. That is what the equal treatment
12 provision says.

13 Q. Okay. Would you, in your
14 experience --

15 MR. GREENWALD: Could you please read
16 that back, the question and answer.

17 (Record read.)

18 Q. All right. So, in assessing JPMorgan
19 Chase, you would have to look at all the nature of
20 the claims, as to whether it was similar or not,
21 correct?

22 A. You have to look at whether the
23 circumstances were similar.

24 Q. Okay. The circumstances would
25 include an assessment of the claims, would it not?

1 A. Yes. In fact, that's the second
2 factor that's listed.

3 Q. And what you're saying in this
4 paragraph is when the claims are different, like a
5 two- or a six-year, as a circumstance, that makes it
6 less similar?

7 A. Yes. Makes the circum -- you said
8 "it." Just to be clear, it makes the circumstances
9 less similar.

10 Q. Right. Okay.

11 Let's go to paragraph 21(d). The
12 heading of this paragraph, for the record, is
13 "Defendant's Knowledge or Complicity." Let me see
14 where I want to pick this up.

15 I'm going to pick it up right at the
16 very beginning and I'll read this into the record:

17 "This factor appeared only in the
18 last draft, which Cravath proposed only after the
19 expansion of the equal treatment provision's scope
20 to include two- and six-year transfers. Again, I
21 proposed the expansion to prevent the Trustee from
22 settling avoiding power claims covering several
23 transfers in a way that allocated portions of the
24 settlement to 90-day claims, to two-year claims, and
25 to six-year claims. Under the narrower formulation,

1 the Trustee could, for example, settle the 90-day
2 claims for 85 percent and two-year claims for
3 substantially less, so that the overall percentage
4 was below 85 percent, even though the Trustee might
5 have a solid case on the two-year transfers under
6 548(a)(1)(A) and section 548(c), lack of good faith,
7 based on the defendant's knowledge or complicity.

8 "The Trustee agreed in paragraph P of
9 the agreement that SUS and Arbitrage did not know of
10 and were not complicit in the BLMIS fraud and
11 therefore did not pursue Arbitrage for a 35 million
12 dollar, two-year transfer that was a return of
13 invested principal. If another defendant knew or
14 was complicit or otherwise did not meet the good
15 faith requirement of Section 548(c) as a defense to
16 a two-year or six-year claim for return of
17 principal, the Trustee would have leverage in
18 negotiating a settlement that was at least as strong
19 as the leverage he had when negotiating with SUS and
20 Arbitrage, making the circumstances of any resulting
21 settlement more similar."

22 Let me start first with the sentence
23 that says: "The Trustee agreed in paragraph P of
24 the agreement that SUS and Arbitrage did not know of
25 and were not complicit." Do you see that?

1 A. Yes.

2 Q. So, is that one of the circumstances
3 you would have to take into account as to whether it
4 was similar or not?

5 A. Yes.

6 Q. So the fact that Optimal didn't have
7 knowledge and somebody else did, if somebody did
8 have knowledge according to the Trustee, it would
9 make it less similar?

10 A. Literally, yes.

11 Q. So that -- and if the Trustee, under
12 the current law -- let me ask you, back up. I want
13 to discuss 548 -- 546(e) at this point. Okay.

14 A. Yes.

15 Q. Now, when you were negotiating March
16 of '09 do you know what the law required in terms of
17 the Trustee approving -- once the defense of good
18 faith had been raised, to prove bad faith on the
19 part of the transferee?

20 A. Are you referring to 546(e)?

21 Q. No. I'm referring to the Bankruptcy
22 Code itself. Forget 546(e).

23 At that time did 546(e) have any
24 application to the standard that would be enunciated
25 with regard to proving a two- or six-year transfer?

1 A. 546(e) doesn't have any application
2 to good faith one way or the other.

3 Q. All right. You're familiar with
4 Judge Rakoff's ruling, however, with regard to
5 proving actual knowledge, are you not?

6 A. Yes. He's had several rulings.

7 Q. Let's deal with the last one. Strike
8 the Katz/Wilpon reference of 546(e). The one that
9 he just did under 548(a)(1)(A). Are you familiar
10 with that?

11 A. Yes. Actually that was under 548(c).

12 Q. Okay, of course it was, that's right.
13 But what is your understanding of
14 recent ruling by Judge Rakoff as to what the
15 Trustee's burden is, both in pleading and in proof,
16 with regard to proving actual knowledge?

17 A. To be clear, that ruling was issued
18 in April 2014?

19 Q. Yes.

20 A. My understanding of his ruling was
21 that a defendant would be -- I'm sorry, did you say
22 with respect to pleading and proof?

23 Q. Yes.

24 A. My understanding of this ruling was
25 that a defendant would be in good faith -- in this

1 case, in this SIPA case involving the particular
2 kind of fraud dealing with securities involved here,
3 and he distinguished a SIPA case from an ordinary
4 bankruptcy case on that point -- the defendant would
5 be in good faith unless the defendant knew of the
6 fraud or, I think his words were, was willfully
7 blind to it. I don't remember if he used -- he used
8 that in prior decisions, but I don't remember if he
9 used it in this one, but I think he did. And that
10 it was the Trustee's burden to plead the defendant's
11 lack of good faith rather than the defendant's
12 burden to assert good faith as an affirmative
13 defense.

14 Q. Um-hum. Prior to that --

15 A. Did I get that right?

16 Q. I believe so.

17 In 546 -- in the context of 546(e),
18 did he render a ruling with regard to the knowledge
19 that was required to be proven by the Trustee in
20 order to avoid the application of 546(e) to
21 fraudulent transfer claims?

22 A. Read that back, please.

23 (Question read.)

24 A. I don't recall that he ruled in the
25 context in which -- that you just described.

1 Q. What is your understanding?

2 A. My understanding is that 546(e),
3 which is referred to as a safe harbor from avoiding
4 powers, certain avoiding powers in certain
5 circumstances, does not exempt or provide a safe
6 harbor to transfers that are avoidable under Section
7 548(a)(1)(A), which we refer to as an actual
8 fraudulent transfer. That is, a transfer with
9 actual intent to hinder, delay or defraud creditors.
10 And therefore the ruling doesn't relate to 546(e) so
11 much as it relates to what is required for the
12 Trustee to plead and approve a 541(a)(1)(A) claim.
13 And in his most recent ruling last month, he said
14 the Trustee needed to plead lack of good faith in
15 this context, in this particular kind of a SIPA
16 case.

17 Q. Is there not a ruling by Judge Rakoff
18 that the Trustee can actually avoid the application
19 of 546(e) to all the fraudulent transfers for the
20 six-year period if, in fact, he can show that the
21 defendant possessed actual knowledge of the fraud?

22 A. I don't recall that ruling. I won't
23 say there isn't. He's done many and I've tried to
24 follow them, but I don't recall that one.

25 But by the way, after this is done

1 I'd be interested in getting the citation for it
2 since I try to follow the case law on this.

3 Q. Sure, of course. Happy to provide
4 it.

5 Were either of those decisions in
6 place in March of '09?

7 A. The calendar speaks for itself,
8 Mr. Sheehan, come on.

9 Q. Well, for the record, though. But if
10 in fact --

11 MR. GREENWALD: Nothing that Rich
12 said on that subject has been changing.

13 A. Let me see, was 2014 after 2009? I
14 think the answer is yes.

15 Q. Thank you.

16 (Comments off the record.)

17 Q. In any event, in March of '09, if
18 those decisions had been in place, would you have
19 settled?

20 MR. GREENWALD: Hold on. You know,
21 I'm going to object to that as work product.
22 Speculation, too, but a better objection is work
23 product. You're asking to get inside his head as to
24 what he would have recommended.

25 A. I don't know, but I will tell you --

1 Q. Let me ask it differently. Could the
2 Trustee have brought a preference action under these
3 current rulings against Optimal --

4 Mr. GREENWALD: Hold on, wait.

5 Q. Could the Trustee have brought a
6 preference action against Optimal under these
7 rulings in 2009 if those rulings were in place then?

8 MR. GREENWALD: I think we should
9 confer about this privilege issue.

10 MR. SHEEHAN: Sure.

11 (Discussion off the record between
12 the witness and his counsel outside the deposition
13 room.)

14 MR. GREENWALD: Okay. We're going to
15 stick with the instruction not to answer that on the
16 ground of attorney work product. It's also
17 speculative, but I'm not gonna -- that's not a basis
18 for instruction not to answer.

19 Q. Okay. Let's say you had not settled.

20 A. I'm sorry?

21 Q. You had not settled. The case is
22 still outstanding. We sued you. Would you make a
23 motion to dismiss today based on the law as you know
24 it?

25 MR. GREENWALD: That's also work

1 product. He's here to talk about the facts of the
2 settlement.

3 Q. Let me ask it a different way.

4 When the law changes, is that a
5 circumstance you take into account on whether it's
6 equal or similar?

7 MR. GREENWALD: Objection.

8 MR. SHEEHAN: To what?

9 A. The agreement says similar
10 circumstances and it says the factors are
11 nonexclusive.

12 Q. Correct. So if the law changes and
13 the Trustee's burden becomes substantially higher
14 than that which existed in March of '09, that's a
15 circumstance you take into account in terms of
16 whether it's similar or deserves equal treatment; is
17 that not correct?

18 A. I don't doubt that you will argue
19 that to Judge Bernstein and that will be for him to
20 decide.

21 Q. You don't think that's a factor?

22 MR. GREENWALD: Objection.

23 Q. I'm not asking --

24 A. You're asking what --

25 Q. You're a lawyer.

1 A. You're asking what we're going to
2 argue in this case. I don't think we need to answer
3 that.

4 Q. Is it your position then that it's
5 not a factor?

6 A. That is something for the briefs and
7 the argument in this case.

8 Q. No. You've opined on this. You've
9 said what's similar and dissimilar. You said if
10 it's a six-year claim or a four-year claim. Why are
11 they dissimilar to a preference?

12 A. Because the standards -- because what
13 the Trustee has to prove is different.

14 Q. Correct. So if that changes --
15 you've already admitted that that's a circumstance,
16 have you not, that the law changes and the elements
17 that the Trustee has to prove, that that is a
18 circumstance that has to be taken into account?
19 Haven't you admitted that?

20 A. I still think this is just argument.

21 Q. I understand that, but you put the
22 declaration in; I didn't, Mr. Levin. You're the one
23 who said there was a difference. I'm asking you
24 now. This is a fair question.

25 MR. GREENWALD: This is now

1 argumentative and I'm going to object on that
2 ground. If it keeps up we'll --

3 MR. SHEEHAN: Well, argumentative,
4 are you directing him not to answer?

5 MR. GREENWALD: No, I'm not going to
6 direct him not to answer at this point, but I do
7 think the tenor, the tone, the nature of the
8 questions being asked have, as he's pointed out,
9 crossed the line from asking him factual questions
10 about the circumstances of negotiations --

11 MR. SHEEHAN: All right. I apologize
12 if I get a little too -- I am a passionate attorney
13 and I apologize for my passion.

14 A. I know you are. No apology needed.
15 I understand your position.

16 Q. Let's go back to 21(b).

17 A. Yes.

18 Q. Where you have submitted a
19 declaration to the Court suggesting what
20 circumstances you believe should be taken into
21 account in terms of -- based on your negotiation,
22 your familiarity with the agreement, as to when the
23 equal treatment clause applies. Correct?

24 A. Not exactly correct.

25 Q. No?

1 A. Because the lead-in, the first words
2 of that paragraph are, "To the best of my
3 recollection."

4 Q. Right.

5 A. This is what I understood it at the
6 time to mean.

7 Q. Well, let's pick up on this phrase.
8 Your phrase, "If the claim was easier to pursue,
9 such as a 90-day transfer or a fictitious profits
10 transfer." Do you see that?

11 A. Yes.

12 Q. So you're positing that that kind of
13 claim is easier to pursue, correct?

14 A. Yes.

15 Q. All right. In contradistinction to
16 something that might be more difficult to prove?

17 A. Yes.

18 Q. And you then give an example of
19 what's more difficult to prove, correct?

20 A. Correct.

21 Q. All right. So you're saying that if
22 the burden of proof is more difficult, that's a
23 factor that makes it less equal; is that correct?

24 A. That is a factor that weighs on
25 whether the circumstances are similar, yes.

1 Q. All right, fine, thanks. My fault in
2 asking the question inappropriately. I apologize.

3 Anyway, let's go to 21(e). It's
4 entitled "The Stage of the Litigation."

5 A. Yes.

6 Q. And I am reading, it's on page 15,
7 starting with the phrase "As is." I think it's the
8 second sentence.

9 A. Yes.

10 Q. "As is common in settling preference
11 litigation with a trustee, I argued --" when you say
12 that, you mean to my colleagues here at Baker, you
13 were arguing with them?

14 A. That's I think what I meant by this,
15 yes.

16 Q. "I argued that an early settlement,
17 which reduced the resources the Trustee would have
18 to marshal to pursue recovery, warranted a
19 settlement more favorable to SUS and Arbitrage than
20 one reached after lengthy litigation. The Trustee
21 apparently agreed, settling for 85 percent of the
22 avoiding power claims against SUS. I wanted that
23 factor to be considered in determining whether the
24 equal treatment provision should apply, so that if a
25 defendant settled early in the litigation process,

1 this factor would be neutral. But if the settlement
2 occurred after, or well after the Trustee's
3 commencement of litigation, then the factor would
4 weigh in favor of application of the equal treatment
5 provision, and an early settlement discount should
6 not be available."

7 My question is, just so I understand
8 this, are you saying that once we settled with
9 Optimal, that any litigation that took place after
10 that further down the line, just by the function of
11 period of time, it became less susceptible -- became
12 more susceptible to equal treatment?

13 A. Let me answer your question this way.
14 As I said earlier in my deposition, there were two
15 factors that work here on early settlement. One was
16 early stage of the plaintiff/defendant litigation,
17 the avoiding power litigation, and one was early
18 stage in the SIPA proceeding.

19 As you see, my declaration here
20 focuses on the early stage of this -- of the
21 adversary proceeding -- potential adversary
22 proceeding litigation.

23 My position on this was that if a
24 defendant came to the table quickly when the Trustee
25 called, that would be a similar circumstance. But

1 if a defendant fought in lengthy battle before
2 coming to the table, that would not -- that would be
3 dissimilar and, therefore, would lean toward
4 requiring a settlement to be at least 85 percent, or
5 the benchmark percentage, for the equal treatment
6 provision not to apply. I'm sorry. That got a
7 little garbled. Obviously, if it's more than --

8 Q. I was going to ask that it be read
9 back.

10 A. If it's more than 85 percent, equal
11 treatment provision doesn't apply.

12 Q. Of course.

13 A. Because it's not a qualifying
14 settlement.

15 But my point is that if the defendant
16 came to the table only after a lengthy fight, that
17 was not similar and, therefore, there would have to
18 be other factors that would justify the Trustee
19 settling for less than 85 percent to prevent the
20 application of the equal treatment provision. Or to
21 prevent -- to prevent the refund.

22 The reason I'm getting hung up here
23 is because --

24 Q. I'm having a little trouble, too. Go
25 ahead.

1 A. When I say application of the equal
2 treatment provision, what I said earlier in my
3 deposition was that it applies to a qualifying
4 settlement, which is more than the 40 million, less
5 than 85 percent.

6 Sometimes I've used the phrase, and
7 you use it as well, apply the equal treatment
8 provision means the Trustee is required to provide a
9 refund. Or said differently, that the circumstances
10 are sufficiently similar that the Trustee is
11 required to provide a refund.

12 So, in my last answer what I was
13 referring to was not whether JPMorgan was a -- or
14 any settlement was a qualifying settlement, 40
15 million, 85 percent, but rather that if a defendant
16 fought long and hard and the Trustee came to a
17 qualifying settlement, unless the other factors
18 justified settling for less than 85 percent, that
19 that factor would lean to requiring the Trustee to
20 settle for 85 percent or more or, said differently,
21 that we would then be entitled to a refund. Was
22 that clear?

23 Q. I think I understand it. It's the
24 temporal quality that I'm trying to understand
25 because of what you've said here.

1 A. Yes.

2 Q. So let me see if I can address it a
3 little bit differently.

4 A. I mean, the problem with the
5 shorthands is that they sweep under a lot of
6 concepts. And so my answer was lengthy because I
7 didn't want the shorthand to obscure some elements
8 that I think are required to really understand how
9 this works.

10 Q. I think I understand it. As I
11 understand what you're saying -- or let me rephrase
12 that.

13 That with regard to paragraph 21(e),
14 if the settlement takes place later, after some
15 lengthy battle, that fact alone, as one of the many
16 circumstances that would be taken into account, in
17 your opinion that fact alone would weigh in favor of
18 it applying -- getting equal treatment, but it would
19 have to be other factors that would justify the
20 Trustee in settling below 85 percent?

21 A. I agree with your description except
22 for the very first part of your question where you
23 asked if that were my opinion. What I'm discussing
24 here is what the -- my thinking was in proposing
25 this provision in the settlement agreement. I'm not

1 talking about the opinion -- you asked about
2 opinion, sounds like we're arguing about what the
3 result should be here. My declaration goes to my
4 thinking at the time and that's what -- I'm agreeing
5 with you in that context.

6 Q. Taking into account all the factors
7 that you've given us here in your declaration, why
8 do you think the JPMorgan Chase settlement qualifies
9 as a settlement that's covered?

10 THE WITNESS: Is this argument?

11 MR. GREENWALD: It is argument.

12 THE WITNESS: Okay to answer?

13 MR. GREENWALD: Umm...

14 Q. Let me rephrase it and try to put it
15 more in the context --

16 MR. GREENWALD: Really is what I
17 thought the briefs would be covering.

18 MR. SHEEHAN: Well, quite frankly, I
19 didn't know why we were taking depositions. In any
20 event, let me ask it differently.

21 BY MR. SHEEHAN:

22 Q. If we went through the nonexclusive
23 factors, which ones do you think -- are there
24 certain factors that you think weigh in favor of the
25 qualification and some factors that don't?

1 A. That's the same question; it's just
2 phrased differently. I think it's getting to the
3 argument of what the briefs are going to address.

4 Q. And I'm not looking to argue. Let me
5 see if I can get to my question a little bit better.
6 I don't know if I can.

7 Just dealing with -- let me get to
8 the -- rather than say it wrong here. Okay, I think
9 you're probably right. Trying to phrase this in the
10 form of a question. It's probably just emanating
11 more from my curiosity as to why you think they're
12 similar.

13 MR. GREENWALD: I guess that's what
14 it gets to, attorney work product. Essentially
15 you're saying, can I have the outline of your brief.
16 Clearly you asking that, we would object it's work
17 product.

18 MR. SHEEHAN: All right. Could we
19 have two minutes? I think I'm done.

20 (Recess taken.)

21 BY MR. SHEEHAN:

22 Q. Just one last question. One or two.
23 Whenever a lawyer says one or two, you know, that's
24 how it goes.

25 If we look at paragraph 13(c), which

1 lists the nonexclusive factors, we've been talking
2 about taking into account all of the circumstances.
3 Is there any one of these that, standing alone,
4 would make it unqualified? For example -- I'll even
5 give you an example. For example, if someone can't
6 pay, do you start looking at the other examples if
7 they can't pay? Not that that applies here, I
8 understand that.

9 A. You asked whether that would make it
10 not qualifying. No, it's still qualified
11 settlement, but would the equal treatment provision
12 not -- or would the circumstances be sufficiently
13 dissimilar? Absolutely yes. In fact, we had one of
14 those. We negotiated, we investigated, I think it
15 was a settlement at like 45 percent or 50 percent of
16 defendants who could clearly not pay, even though
17 the factors were -- all of the other factors were
18 very strong and we said, that one overrides
19 everything.

20 Q. Okay.

21 A. And notice, it's listed first. And I
22 said that in my declaration. Yes.

23 MR. SHEEHAN: Okay. Thank you.

24 We're done. Thank you very much.

25 THE WITNESS: You're welcome. Thank

1 **you.**

2 **(Deposition concluded 11:42 a.m.)**

3 **-o0o-**

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

WITNESS NAME: RICHARD LEVIN, ESQ.

[illegible]

Picard v. JPMorgan

Richard Levine 5-16-14

91

1 I, RICHARD LEVIN, ESQ., have read the
2 foregoing deposition and hereby affix my signature
3 that same is true and correct, except as noted
4 above.

5 _____
6 RICHARD LEVIN, ESQ.

7
8 THE STATE OF _____
9 COUNTY OF _____
10

11 Before me, _____, on this day
12 personally appeared _____, known to me
13 (or proved to me on the oath of or through
14 _____ (description of identity card or other
15 document) to be the person whose name is subscribed
16 to the foregoing instrument and acknowledged to me
17 that he/she executed the same for the purpose and
18 consideration therein expressed.

19 Given under my hand and seal of office on this
20 _____ day of _____, _____.
21

22 _____
23 NOTARY PUBLIC IN AND FOR
24 THE STATE OF _____
25

My Commission Expires: _____.

REPORTER'S CERTIFICATION

I, NANCY C. BENDISH, a Certified Court Reporter and Notary Public of the States of New York and New Jersey, do hereby certify that prior to the commencement of the aforementioned examination RICHARD LEVIN, ESQ. was sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any party in this action and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the event nor outcome of this action.



Notary Public of the State of New York

Dated: May 17, 2014

A			
abetting 39:14	aggregate 55:14	apparently 81:21	77:23,24 78:1,23
ability 31:10	ago 19:14 49:10,17	appear 48:6,9 64:19	79:9 81:2 87:16
able 7:13	agree 7:14 14:19	appeared 23:18	aspect 59:21
absolutely 43:2 63:21	21:25 45:4 48:19	69:17 91:12	assert 16:22 73:12
88:13	50:13,15 66:9 85:21	appears 45:5,18	asserted 19:13,14
accommodating 58:1	agreed 21:15 67:1	46:14 48:18	27:7,16 39:13
61:22	70:8,23 81:21	applicable 27:23	asserting 28:24
accompanied 49:3	agreeing 86:4	application 31:21	assertion 34:17
account 17:17 38:18	agreement 3:15,17	64:7 71:24 72:1	assessing 68:18
38:20 56:14 68:9	3:18,19 6:7 15:1	73:20 74:18 82:4	assessment 16:15,21
71:3 77:5,15 78:18	26:16 40:9,12,19	83:20 84:1	68:25
79:21 85:16 86:6	43:21 45:21 47:17	applied 42:18	asset 23:14
88:2	47:19,21 64:8,19	applies 56:25 57:1	assets 23:2
accounts 15:3	67:22 70:9,24 77:9	67:9 79:23 84:3	assigned 33:13
accurate 53:22 55:3	79:22 85:25	88:7	assisted 65:15
92:10	Ah 32:19 62:2	apply 31:13 56:2	assume 27:13 42:25
achieve 19:9	ahead 61:4 83:25	81:24 83:6,11 84:7	52:24 53:5
acknowledge 16:23	aiding 39:14	applying 85:18	assumed 52:18,18
acknowledged 91:16	al 3:16 64:9	approve 74:12	attached 46:20 47:11
Act 12:9	allegations 34:5	approving 71:17	attachment 47:15
action 19:21 20:5,8	allocated 69:23	April 58:10 66:25	attention 7:21 25:2
20:15 30:19 31:9,11	allowed 41:11	72:18	25:12,14 44:4 46:2
31:25 32:2,6,25,25	allows 28:1	Arbitrage 7:5 14:25	47:18 48:11 54:21
33:6,9,10 34:12	amend 30:22	15:2 19:5 44:12	55:7 57:15,17 58:24
35:21 36:17 39:12	amount 21:7,10 41:7	66:1 70:9,11,20,24	62:6 64:10
39:18,19 56:7,10,11	55:18	81:19	attorney 76:16 79:12
76:2,6 92:16,19	analysis 19:19	area 5:1	87:14 92:15,17
actions 24:8 41:6	analyze 8:12,13,19	argue 31:6 77:18	authorized 9:22
54:16	analyzed 8:18 20:25	78:2 87:4	available 20:17 82:6
actual 18:16 34:14	ANIM 2:19	argued 41:3 81:11,16	Avenue 2:17
72:5,16 74:7,9,21	answer 8:14 9:5,18	arguing 51:9 81:13	avoid 27:19 66:2
addition 30:10	10:1 15:17 20:17	86:2	73:20 74:18
address 85:2 87:3	30:6 32:20,23 35:2	argument 53:5 63:9	avoidable 28:21
addressing 60:17,19	37:11,13,17,20	78:7,20 86:10,11	34:11 57:11 74:6
admitted 78:15,19	53:12 58:20 60:24	87:3	avoidance 28:24
adopt 42:19	62:2 63:10 68:16	argumentative 79:1	36:20
advantage 23:4	75:14 76:15,18 78:2	79:3	avoided 35:18
adversary 23:5 82:21	79:4,6 82:13 84:12	arms 24:15	avoiding 11:12 23:2
82:21	85:6 86:12	Arps 4:21	23:12,13,22 24:8
advise 8:9,23	antecedent 17:17	arrive 21:21 23:11	27:4,8 35:21,24
Adv.Pro.No 1:14	56:15	articulated 14:6 17:2	36:6,17 41:6 48:15
affirmative 31:3	anyway 27:14 39:24	asked 9:9,10,25 30:5	54:16 57:3 65:16,18
73:12	81:3	41:25 42:20 79:8	69:22 74:3,4 81:22
affix 91:2	apologize 35:5 79:11	85:23 86:1 88:9	82:17
aforementioned 92:6	79:13 81:2	asking 16:25 20:20	aware 17:23 24:17,19
	apology 79:14	20:21,22 75:23	39:5,17,25

a.m 2:7 63:13 89:2	43:14,20 44:22	BROWN 2:13	49:5 50:16,17,18
B	53:21 55:2 73:16	Building 24:24	52:10,11 53:10 90:3
B 3:12 4:1 48:11	79:20	burden 35:23 36:20	changed 6:1 52:6
back 11:19 20:3 22:2	benchmark 40:19	72:15 73:10,12	53:8 60:3 61:14,16
27:19 28:1,5 33:21	83:5	77:13 80:22	61:18 62:9
37:12 40:10 43:8	BENDISH 2:2 92:3	business 31:2,3,7,15	changes 54:14 62:19
45:8 49:23 51:18	benefit 17:16 41:13	busy 53:23	77:4,12 78:14,16
52:13 54:12 55:4	41:14	B.A.P 36:3	90:1
57:12,13,13 58:6,19	Bernard 1:7,11,15,16	C	changing 48:25 54:19
58:21 60:3,7,9,11	Bernstein 77:19	C 2:2,10 4:1 92:3	60:13,18 75:12
60:22,25 62:19	best 14:20 22:4 65:14	calculated 55:14	Chapter 12:8 17:22
63:22 68:16 71:12	80:2	calendar 75:7	characterization
73:22 79:16 83:9	better 15:19,23 75:22	call 6:16 7:13,16	44:1
bad 71:18	87:5	10:13,14,25 11:2	characterize 17:6,8
bait 51:10	beyond 39:4	14:13 16:8,24 26:18	characterized 22:10
Baker 2:4,11 45:19	big 54:14	26:20 45:11 49:2	43:24
81:12	bipartisan 5:17	54:24	chart 25:14 26:18
balance 38:18	bit 10:16 60:8 85:3	called 6:14 7:3,4 9:19	Chase 1:19,19 3:16
bank 1:19 16:16	87:5	10:23 11:1 13:18	25:3,24 27:3 28:9
25:25	blind 73:7	15:14,21 18:10	29:3,4 30:4 33:1
banker 29:5 40:8	BLMIS 2:15 7:24	54:20,23 82:25	36:25 37:6,6,15
banking 26:22 28:7	8:10,12,20 15:3	calling 26:18	38:1,7,13 39:7,20
28:11,16,20,25 29:7	17:24 19:16 24:20	card 91:14	40:2 64:9 66:15,21
bankruptcy 1:1 5:5,8	29:3 31:22 37:18	careful 10:19	67:11 68:19 86:8
5:16,22 6:1 12:9	38:12,14,21,23 40:8	case 17:21 22:14,21	Chase's 38:1 40:7
13:5 15:4 17:5 19:8	46:8 55:13 59:5,15	22:23,25 23:3,6,21	checked 11:19
20:23,24 22:14,23	70:10	39:2 70:5 73:1,1,3,4	CHEPIGA 2:22
23:24 27:6,8,17,22	BLMIS's 29:5 38:17	74:16 75:2 76:21	chowdering 55:11
28:12,13,17 29:8,13	body 48:5	78:2,7	Circuit 33:18 36:2
35:15,17 37:3 55:16	bona 13:11	cases 22:23 42:18	circum 69:7
71:21 73:4	bottom 25:15	cash-in/cash-out	circumstance 69:5
banks 24:19	break 17:25 21:22	55:15	77:5,15 78:15,18
Bar 13:8	63:11	Casual 12:14	82:25
based 19:10,19 23:9	bridge 58:17	categories 27:4 29:15	circumstances 40:23
23:15,24 24:5 28:17	brief 87:15	Century 37:1,9,25	65:24,25 66:5 67:3
62:20 66:20 70:7	briefs 78:6 86:17	38:17,20	67:14 68:7,9,23,24
76:23 79:21	87:3	certain 6:6 66:16	69:8 70:20 71:2
basis 34:16 55:15	bring 31:25 32:2,5	74:4,4 86:24	74:5 77:10 79:10,20
76:17	33:11,15	certainly 32:5	80:25 84:9 85:16
battle 83:1 85:15	brings 33:12	CERTIFICATION	88:2,12
began 10:12	broad 8:13	92:1	citation 75:1
beginning 7:22 61:1	broader 54:17 58:15	Certified 2:2 92:3	Civil 5:12
69:16	broadly 67:6	certify 92:5,9,14	claim 19:13,15 21:6,9
begins 48:12	brought 17:7 24:25	chain 57:20	22:17 23:8 28:23
believe 26:3 28:24	27:21 28:8 32:24	change 32:10,17,21	29:18,19,19,24,25
	33:6 35:21 76:2,5		33:11,23 40:21 46:7

46:7 56:12,13,16 59:4,4,15,16 65:18 65:21 66:1,10 68:1 68:3,5,6,10 70:16 74:12 78:10,10 80:8 80:13 claims 8:21,24 9:3 11:12 13:19,23 14:7 14:16,21 15:6 17:4 17:6 19:10,19 20:25 24:25 25:21 27:5,5 27:10,16,16,21,25 28:3,5,8 29:7,14,23 36:25 39:5,12,14,15 39:16 40:23 41:11 48:15 54:16,17 57:6 57:7,7,10 59:19 65:16 66:14 68:20 68:25 69:4,22,24,24 69:25 70:2,2 73:21 81:22 clarified 22:19 class 39:12,18 clause 6:6 42:18 43:6 66:22 79:23 clear 29:14 48:23 55:10 62:12 69:8 72:17 84:22 clearer 6:19 clearly 48:17 87:16 88:16 client 6:11,13,19,21 7:1,2 8:2,3 9:2,16 9:23 10:3 11:17 clock 20:19 close 67:10 closely 5:19 42:12 closer 62:16 code 5:8,16,22 6:1,3 20:24 27:8,17,22 29:13 35:15,17 55:17 71:22 coffers 23:18 colleagues 81:12 collectively 7:17 colloquial 61:7	combined 46:22 come 9:1,12,15,19 11:7 12:22 14:5 18:3,3 33:16 45:8 75:8 comfortable 42:11 coming 83:2 commenced 55:22 commencement 82:3 92:6 commencing 2:6 Comments 75:16 Commission 12:7 91:25 Committee 5:12 12:5 common 15:10,22 23:4 39:13,16 81:10 community 13:5,6 complaint 25:25 27:3 39:7,13 complicit 70:10,14,25 complicity 69:13 70:7 concept 60:10 64:15 64:23 65:2 concepts 85:6 conceptual 42:13 concern 41:23 42:10 58:13 59:9 60:20 concerned 42:4 concerns 57:16 58:1 58:4,8 60:18 concluded 89:2 conclusion 23:11 33:17 concomitant 65:19 condition 56:3 conditions 55:25 66:24 67:3 confer 76:9 conferences 12:19 connection 6:12 7:23 28:4 consider 4:15 21:4 32:9 consideration 91:18	considered 81:23 Consolidated 1:14 conspiracy 39:15 constitute 30:9 Constitutional 5:13 constraining 42:3 constructive 13:12 content 49:10,16 54:10 context 18:19 19:4 21:1 30:4 36:10 57:11 73:17,25 74:15 86:5,15 contradistinction 80:15 convention 42:20 43:3 conversation 12:22 42:9 49:4,9 60:10 60:12,16 conversations 49:7 49:10 55:1 Conveyance 34:12 corporate 37:7 CORPORATION 1:4 correct 6:8 22:11 32:7 33:3 34:20 38:15 44:2 52:1,7 67:23 68:4,21 77:12 77:17 78:14 79:23 79:24 80:13,19,20 80:23 91:3 correctly 22:10 35:2 correspondence 11:20 47:5,13 53:21 counsel 5:18 12:5 14:6,22 18:7 41:16 41:22 42:23 43:1 47:5 51:13 52:18,18 64:21 76:12 92:15 92:17 counsel's 41:24 50:1 count 13:10 COUNTY 91:9 course 27:12 30:25	31:1,3,7,15 64:22 72:12 75:3 83:12 court 1:1 2:2 24:4,5 27:2 32:17 33:19 43:18 79:19 92:3 courts 36:11 covered 86:9 covering 54:18 69:22 86:17 Cravath 2:16 4:11,20 69:18 Cravath's 8:8 credibility 13:11 creditor 17:16,19,21 creditors 5:6 17:20 18:17 34:15 74:9 criminal 40:6 crossed 79:9 CRR 2:3 cumulative 57:3 curiosity 87:11 current 6:19 71:12 76:3 custody 23:17 customer 15:3 38:18 45:5 46:8,9,10,15 48:6,21,25 52:11 55:12,18 59:5,15 60:2,13,19 61:2,3 62:10 customers 24:17,20 41:11 44:13 45:1 48:3 49:13,20,21 50:9,16 51:3,4,17 52:4,7,12,20 53:2 53:10 59:19 61:9,12 61:25 62:23 63:5,7 63:8 cut 57:22 <hr/> D <hr/> D 3:1 4:1 date 17:18 28:2 55:19 92:12 Dated 92:24 David 2:13,18 21:25
---	--	---	--

day 91:11,20	70:15 71:17 73:13	direction 14:17 29:21	drafting 62:5,15,17
days 15:3 17:18	defenses 30:11 34:22	29:22	drafts 45:20 49:13,15
26:24 27:6 28:11	36:16	directly 38:22 41:13	50:12 53:17 54:5
37:2,4,5 55:21	deferred 40:9	discount 15:9 82:5	58:11 65:15 66:25
56:10	defined 46:9,15	discovery 11:23 16:5	
deal 15:23 72:7	67:11	16:10,11 24:18	E
dealing 62:24 73:2	definition 46:13	discuss 13:19 71:13	E 2:10,10,14 3:1,12
87:7	defraud 18:16 34:15	discussed 14:22	4:1
deals 56:21	74:9	34:18 64:16,24 65:3	earlier 29:15 30:15
dealt 63:6	delay 18:16 34:15	discussing 85:23	34:18 45:23 50:12
debt 17:17 20:7 31:2	74:9	discussion 11:4 14:10	57:2 65:15 82:14
56:15	demand 11:9,11,16	14:13,15 17:3 18:6	84:2
debtor 1:12 17:15	11:24 24:18	40:12 53:15,16 54:8	early 15:8,22 22:3,14
30:7	Department 40:1,7	54:9,10,11 57:5	22:17 23:4,5,7,7
debtor's 23:17,17	deposition 1:23 2:1	61:19 76:11	24:25 40:17 42:16
decide 77:20	6:23 20:18 76:12	discussions 13:12	61:5 81:16,25 82:5
decided 62:14	82:14 84:3 89:2	21:17 49:12,16	82:15,16,17,20
decision 36:3,3	91:2	64:21	easier 36:13 65:21
decisions 73:8 75:5	depositions 86:19	dismiss 76:23	80:8,13
75:18	describe 55:25	dispute 67:7	edited 5:19
declaration 3:20 15:7	described 29:14	disruption 16:5	effort 5:17 16:12
22:2,6 25:6 40:25	36:12 43:9 56:4	dissatisfied 53:17,18	Eighth 2:17
63:16 64:6,11 67:20	60:9 73:25	dissimilar 78:9,11	either 14:13 30:20
78:22 79:19 82:19	description 3:13	83:3 88:13	55:14 66:12,17 75:5
86:3,7 88:22	35:15 56:7 85:21	distinguished 73:3	elements 19:13 23:6
deep 32:14	91:14	district 1:1 33:13,15	78:16 85:7
defend 17:9	deserves 77:16	divine 52:10	email 46:20,21 47:4,5
defendant 1:8 22:18	determining 81:23	Division 12:6,7	47:12 49:2,6 53:20
29:25 30:1,6 34:21	difference 78:23	document 43:23 44:5	54:6 57:17
48:16,17 60:19	differences 58:10	45:16 46:22 51:24	Emails 3:19
65:19 70:13 72:21	different 6:24 22:20	52:17,18 54:22	emanate 44:21
72:25 73:4,5 74:21	23:1 27:4 33:16,16	59:12 64:4 91:15	emanating 87:10
81:25 82:24 83:1,15	63:16 69:4 77:3	documents 47:11	EMILY 2:22
84:15	78:13	52:1	employed 4:9,10,15
defendants 1:21 41:5	differently 76:1 84:9	doing 62:16	employee 92:15,17
48:8,16 49:1,20	84:20 85:3 86:20	dollar 70:12	enables 17:19
50:17 51:4,16 52:7	87:2	doubt 77:18	engage 9:16,20 10:4
52:11,12,21 53:1,2	difficult 17:9 66:2	draft 3:17,18 43:13	engaged 7:22,25
53:11 54:19 60:4,13	80:16,19,22	43:14,20 44:18	engagement 8:11
63:7 88:16	difficulty 65:17	45:18,23,25 47:16	enjoy 65:23
defendant's 69:13	direct 10:3 25:12,14	47:20 48:21,22	enormous 16:4
70:7 73:10,11	38:20 44:4 46:2	50:25 54:11,15,15	entire 51:12
defense 19:20 20:2,4	48:11 55:7 64:10	61:19 62:1,7 63:6	entities 6:18 7:3,8,16
29:8,11 30:1,4,14	79:6	67:1 69:18	14:24 19:1
30:15,17,17,24,25	directing 7:21 57:15	drafted 5:19 42:11	entitle 19:17
31:4 34:19 36:10	57:16 58:24 79:4	drafter 5:17 44:23	entitled 81:4 84:21

entity 6:24 37:6,8 46:14 enunciated 71:24 equal 6:6 40:11 41:16 42:17 44:7,12 47:7 47:16,20 56:1 58:14 58:15 59:18 64:7 66:22 67:9,12,17 68:11 69:19 77:6,16 79:23 80:23 81:24 82:4,12 83:5,10,20 84:1,7 85:18 88:11 equating 35:4 Equities 7:4 ESQ 1:24 2:1,13,13 2:14,18,19,22 3:3 4:1 90:2 91:1,6 92:7 Essentially 87:14 estate 23:2,14 estate's 41:13 et 3:16 64:9 event 26:8 35:7 46:6 75:17 86:20 92:19 eventually 21:6,9 exact 11:15 exactly 4:10 11:6 27:15 34:9 43:5 79:24 exam 20:12 examination 3:4 4:2 92:6 example 70:1 80:18 88:4,5,5 examples 88:6 excess 55:13 exchange 12:7 45:20 exclusive 29:16 excuse 28:22 34:25 47:14 56:25 executed 46:18 91:17 exempt 74:5 exhibit 25:10,13 39:3 43:16 45:13 46:25 63:25 existed 77:14 expand 54:15	expansion 69:19,21 expense 28:20 experience 5:23 6:4 17:5 23:25 24:6 68:14 expert 20:21 21:4 32:22 expertise 19:8 Expires 91:25 explain 41:20 express 42:15 66:24 67:3 expressed 41:23 42:10 58:2,9 91:18 extent 8:20 32:3	fallen 66:24 falls 67:12,17 familiar 25:24 26:1 31:17,20 72:3,9 familiarity 79:22 fault 81:1 favor 82:4 85:17 86:24 favorable 19:9 81:19 February 11:20 fee 28:7 feeder 38:19 fees 16:5 26:22 28:11 28:16,20,25 29:7 fictitious 18:19 19:6 55:14 56:8,12,13,21 56:25 57:7 65:22 66:11,13 67:5 68:1 80:9 fides 13:12 fight 83:16 figured 11:3 file 11:19 filed 25:25 filing 17:18 final 46:17 66:25 financial 24:15 financially 92:18 find 40:21 fine 4:5 7:18 8:15 10:21 21:1,2 43:4 53:13 81:1 finish 57:4 firm 4:16 7:25 8:1 62:25 firm's 8:3 first 11:2 14:13,14 25:23 28:5 40:13 42:9,19 47:12 48:21 49:12 55:4 70:22 80:1 85:22 88:21 five 38:25 49:10,16 58:7 flexibility 42:5 flip 32:11 Flom 4:21	focus 29:6 focuses 82:20 follow 74:24 75:2 foolish 41:1 61:6 foregoing 91:2,16 92:10 Forget 71:22 form 87:10 formally 24:25 former 46:8 59:5,15 formulation 69:25 forth 43:8 92:13 forward 12:12 42:2 fought 83:1 84:16 four-year 78:10 frankly 86:18 fraud 39:15 70:10 73:2,6 74:21 fraudulent 19:15 27:18,19,23 28:21 28:22 30:14 34:12 56:11,15 57:11 73:21 74:8,19 Friday 2:6 friendly 12:14 20:18 friends 12:16 front 58:25 63:17 fully 10:10 function 82:10 fund 2:23 38:19 funds 2:19 24:20 37:10 38:2,22 further 25:14 82:10 92:9,14
F			
facilitate 13:12 fact 9:7 15:8 37:4,4 38:17 48:25 51:15 69:1 71:6 74:20 75:10 85:15,17 88:13 factor 13:14 65:17 69:2,17 77:21 78:5 80:23,24 81:23 82:1 82:3 84:19 factors 67:2 77:10 82:15 83:18 84:17 85:19 86:6,23,24,25 88:1,17,17 facts 24:15 77:1 factual 79:9 fair 5:21 15:12 36:18 52:23 53:4 57:5 59:8 65:1 78:24 Fairfield 37:1,8,9,18 37:25,25 38:7,7,12 38:14,14,17,19,20 fairness 26:12 faith 30:2,14,16,16 30:20,23 31:5 35:3 70:6,15 71:18,18 72:2,25 73:5,11,12 74:14 fall 66:21 67:6			
G			
G 45:4 game 61:5 gap 58:17 garbled 83:7 general 8:14 12:5 15:16 22:14 35:15 58:13 generally 8:18 11:7 22:22 26:1 31:19 67:2			

<p>getting 13:10 24:14 32:21 75:1 83:22 85:18 87:2 give 8:14 41:4 80:18 88:5 given 86:7 91:19 glad 4:8 22:19 go 25:6,20 27:10 33:19 34:23 39:4 40:10 42:12 43:10 43:13 45:7 46:16 55:4 57:13 58:21 60:25 62:19 65:11 69:11 79:16 81:3 83:24 goes 13:25 16:18 86:3 87:24 going 10:9,18,21 20:13 22:2,25 23:2 23:13 25:8,20 27:13 39:24 41:23 42:2,2 42:25 44:10,11 45:3 45:7,11 46:20 50:16 51:10 53:4 54:8 57:12 63:9,17,18,22 64:10 65:8,13 69:15 75:21 76:14 78:1 79:1,5 83:8 87:3 gonna 76:17 good 4:3,5 22:3 30:2 30:13,16,16,20,23 31:5 35:3 70:6,14 71:17 72:2,25 73:5 73:11,12 74:14 goods 30:6 governs 29:13 greater 17:19 GREENWALD 2:18 9:4,10 10:8 13:25 16:17 18:24 19:22 20:19 21:23 26:12 49:22 51:8 52:15 53:3,12 59:10 60:21 63:11 68:15 75:11 75:20 76:4,8,14,25 77:7,22 78:25 79:5</p>	<p>86:11,13,16 87:13 ground 76:16 79:2 group 37:7 48:16 guess 32:23 87:13 guessing 62:21</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>H 1:14 2:14 3:12 4:1 hamstring 42:1 hand 51:6 91:19 handed 25:13 43:19 47:3 happen 42:14 happened 23:23 62:21 happening 53:25 Happy 75:3 harbor 74:3,6 hard 14:15 31:6 84:16 head 16:12 75:23 heading 44:7,12 45:22 47:20,24 49:19 50:5,7 51:3 51:15,25,25 61:25 62:7,11,14,18 63:6 69:12 headings 62:7 hear 4:8 helpful 25:5 41:9 54:7 hereinbefore 92:12 he/she 91:17 higher 77:13 highlight 61:15,18 highlighting 52:24 highly 20:22 41:19 41:21 hinder 18:16 34:15 74:9 Hirschfield 2:14 11:1 11:13 12:23 13:18 14:14 15:15,21 18:7 40:25 47:13 54:7 57:18 Hold 75:20 76:4</p>	<p>holding 31:21 hoped 41:11 hopefully 40:17 Hostetler 2:5,11 45:19 House 5:12 12:4 hung 83:22</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>IDENT 3:13 identification 25:11 43:17 45:14 47:1 64:1 identified 57:6 identify 43:23 45:16 46:23 47:9 48:25 50:19 64:4 65:17 identifying 50:13 identity 91:14 immediate 35:19 important 9:13 41:3 inappropriately 81:2 include 68:25 69:20 included 65:16 including 27:3 incorporates 27:22 incurred 31:2 incurrence 16:4 indirectly 38:23 41:10,12,13 ineffective 33:9 informal 11:23 16:11 24:18 information 11:23 24:1,3,6,16 initial 12:22 35:19,25 36:7,9,10,16,21,21 41:15 43:13,14,20 44:18 49:12 initially 61:10,11 initiate 10:6 initiated 21:17 insert 47:16,20 inside 75:23 insolvency 5:6 instruct 9:4</p>	<p>instruction 76:15,18 instrument 91:16 intent 18:16 20:14 31:8 34:15 74:9 interest 12:9 17:15 interested 75:1 92:18 intermediate 36:8 intimate 5:22,25 6:2 inure 41:12 invested 38:23 70:13 investigated 88:14 investigating 24:22 investigation 40:6 investment 1:7,15 38:6 investments 8:10,12 8:19 38:10,12 INVESTOR 1:3 involved 7:8 73:2 involvement 40:1,7 involving 73:1 in-depth 20:24 irrelevant 20:7 Irving 1:14 2:14 12:1 issue 66:10 76:9 issued 72:17</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>J 2:13 Jersey 2:4 92:5 Jousting 9:13 JPMorgan 1:19,19 3:15 25:3,24 27:3 28:8 29:3,4 30:4 33:1 36:25 37:5,6 37:15 38:1,6,13 39:2,7,20 40:2 64:9 66:15,21 67:11 68:18 84:13 86:8 judge 26:8,11 31:20 33:7,8,14,16 36:3 72:4,14 74:17 77:19 judgment 36:7 Judiciary 5:12 jump 57:12 jurisprudential</p>
---	--	---	--

32:15 Justice 40:7 Justice's 40:1 justified 84:18 justify 83:18 85:19 J.P 1:19,20	87:23 lead-in 80:1 lean 83:3 84:19 learned 62:15 leave 61:24 62:14 leaving 62:22 left 62:8 legally 30:8 legislation 12:10 lengthy 81:20 83:1 83:16 85:6,15 letter 11:18,22,24,25 letters 24:18,18,19 let's 22:11 29:6 34:23 35:7 40:10 43:10,13 46:16 55:4 58:6,21 65:6 69:11 72:7 76:19 79:16 80:7 81:3 leverage 41:5,6 64:16 64:18,24 65:2,21,24 66:5 70:17,19 Levin 1:24 2:1 3:3,20 4:3 25:12 43:18 45:17 47:2,9 51:7 63:15 64:3,6 78:22 90:2 91:1,6 92:7 liability 16:16,23 limit 42:5 59:18 Limitations 27:25 Limited 3:14 limiting 42:3 line 79:9 82:10 Lipstick 24:24 liquidation 1:15 2:15 7:24 17:21 24:11,13 31:22 55:22 list 24:16 listed 26:22 67:1 69:2 88:21 lists 88:1 Literally 71:10 litigate 16:22 litigation 16:5,13 22:22 24:10 81:4,11 81:20,25 82:3,9,16	82:17,22 little 10:16 23:16,19 23:25 48:12 60:8 79:12 83:7,24 85:3 87:5 LLC 1:7,15,20 LLP 2:11,16,21 4:11 4:22 loan 34:1,6,9,10 logjam 54:4 long 4:17,23 26:5 84:16 look 25:19 35:7 43:21 47:3 61:6 68:19,22 87:25 looked 11:21 51:2 62:10,13 67:2 looking 9:14 33:25 41:1 64:14 87:4 88:6 loosely 39:11 57:8,9 lost 51:22 lot 6:1 13:10 62:6 85:5 lower 40:22 Lucchesi 57:18 lunch 12:19 lunches 12:15	46:23,25 63:25 64:3 marshal 81:18 material 32:9 50:17 50:18 59:20,24 60:1 61:15 matter 25:3 31:18 33:12,17 36:22 40:2 Meagher 4:21 mean 29:15 30:3 32:11 41:20 43:1 54:23 57:9 59:14,17 63:8 80:6 81:12 85:4 meaning 53:1 61:12 means 46:7 59:4,15 84:8 meant 22:17 23:5 51:4,16 52:11 81:14 mechanics 42:13 mediate 35:18,19 36:8 meet 70:14 meeting 14:14 member 5:11 mentioned 12:25 24:9 met 12:4 MFN 46:6 million 55:13 59:16 60:1 70:11 84:4,15 mind 65:3 minimum 41:7 minority 5:18 minutes 38:25 87:19 mischaracterize 22:12 misleading 62:23 63:2 misspoke 42:24 mistaken 38:21 misunderstand 38:4 mixed 36:1 moment 19:14 29:6 36:4 39:3 money 23:16 30:7 month 74:13
K Katz/Wilpon 31:18 33:10 72:8 keeps 79:2 kind 12:13 16:13 32:16 73:2 74:15 80:12 knew 11:2 12:25 23:1 23:25 24:16 70:13 73:5 know 10:18 12:1,3,15 13:2,6 14:16 23:21 26:5 33:12,17 46:4 49:25 51:5,14 53:9 62:24 70:9,24 71:16 75:20,25 76:23 79:14 86:19 87:6,23 knowing 59:11 knowledge 5:22 6:2 20:24 34:19 35:3 69:13 70:7 71:7,8 72:5,16 73:18 74:21 known 51:16 91:12	L L 1:7,11,15,16 4:1 lack 70:6 73:11 74:14 language 44:16,20,21 48:5 50:4 largely 23:15 largest 38:17 late 14:15 22:23 Laughter 26:14 law 20:12 27:23 32:10,17,18,21 36:1 39:13,16 62:25 71:12,16 75:2 76:23 77:4,12 78:16 lawyer 20:23 77:25	M Madoff 1:7,11,15,16 maintain 41:6 major 5:1 23:13 majority 5:15 36:2 66:17 making 42:13 65:24 66:5 70:20 MARC 2:14 March 14:15,20 16:8 16:9 17:23 24:13 32:10,24 40:10 47:14,14 71:15 75:6 75:17 77:14 mark 63:17 marked 25:10,13 43:16,19 45:13	

Moore 2:16 4:11 MORGAN 1:19,20 morning 4:3,5 motion 76:23 multiple 7:8 MYERS 2:21 <hr/> N <hr/> N 2:10 3:1 4:1 name 7:20 90:2 91:15 NANCY 2:2 92:3 narrower 58:14 69:25 nature 8:8,20,24 14:21 17:4,11,24 28:7 36:24 43:9 65:16 68:19 79:7 necessarily 66:23 67:6 need 7:20 39:3 78:2 needed 74:14 79:14 negotiated 88:14 negotiating 65:20 66:5 70:18,19 71:15 negotiation 21:14 44:17 53:23 54:2 64:15,18,23 65:2 79:21 negotiations 9:17,20 10:4,7,12,14,24 13:15 41:4,5 42:16 42:22 43:7 50:12 64:23 67:21 79:10 negotiator 58:16 61:23 neither 92:14,16 neutral 82:1 never 42:21 54:20 62:10 new 1:1 2:4,4,5,6,12 2:12,18,18,22,22 27:24 33:13 34:12 47:6 54:5 60:9 92:4 92:5,22 nice 12:17 Ninth 36:2	nonexclusive 77:11 86:22 88:1 normal 62:20 normally 16:7 Notary 2:3 91:22 92:4,22 note 49:6 61:20,20 noted 56:9 91:3 notice 54:24 88:21 notion 42:17 number 21:11,15,16 21:19 N.A 1:19 <hr/> O <hr/> oath 91:13 object 10:8 51:8 75:21 79:1 87:16 objection 25:7,8 49:22 52:16 53:3 59:10 60:21 75:22 77:7,22 obligation 30:9 obscure 85:7 obtained 36:6 Obviously 83:7 occasional 12:15 occasionally 12:20 62:17,18 occurred 82:2 occurs 22:23 offer 11:8 office 10:23 91:19 offices 2:4 oh 33:20 38:13 okay 5:4 6:5,11,14,17 6:21 9:12 10:3,6 15:7 18:18,24 21:12 22:19 28:4 30:19 33:5 37:23 38:16,24 41:8 43:10 44:1 45:9 46:1 47:18 51:23 57:9 65:6 68:13,24 69:10 71:13 72:12 76:14 76:19 86:12 87:8	88:20,23 once 62:18 71:17 82:8 ones 39:6 86:23 one-page 47:15 open 11:4 opening 21:16,19 operating 28:19 opined 78:8 opinion 85:17,23 86:1,2 Optimal 2:19 3:14 6:13,15,18,23 7:3,4 7:13,17,23 8:2,4,8 8:21 13:20,23 14:24 16:16 18:23,24 19:10,11 40:14 41:12 44:19 47:21 58:15 61:2,3 66:10 66:12,21 68:2 71:6 76:3,6 82:9 Optimal's 41:14 options 42:5 order 19:9 73:20 ordinary 28:19 30:25 31:1,3,7,15 73:3 organizations 13:8,9 other's 5:20 outcome 92:19 outline 87:15 outlined 39:7 outside 12:16 66:22 67:6 76:12 outstanding 76:22 overall 70:3 overlap 29:16,21 overrides 88:18 owing 30:8 owned 6:25 owners 7:1 O'MELVENY 2:21 ooo 89:3 <hr/> P <hr/> P 2:10,10 70:8,23 page 3:2,13 25:13,15	44:4 47:19 65:11 81:6 PAGE/LINE 90:3 paid 28:11,16 paper 48:23 54:13 63:1 paragraph 44:5 45:24 46:3,10,13 47:25,25 48:11 55:7 55:23 56:21 58:25 59:4 62:1 64:11,14 65:6,12 66:20 67:18 69:4,11,12 70:8,23 80:2 85:13 87:25 paragraphs 45:4 parallel 39:19,21 part 5:24,25 6:3 8:11 10:1 16:15,21 20:14 45:20 47:12 56:17 71:19 85:22 participated 6:7 particular 22:18 23:5 54:25 68:5 73:1 74:15 particularly 47:19 partner 4:11,13,14 4:16,17 party 53:22 92:16 passion 79:13 passionate 79:12 pay 62:6 88:6,7,16 payment 21:7 28:19 30:8 31:6 56:14 payments 37:8,24 pending 33:17 39:19 percent 21:7,10,12 21:15,20 70:2,4 81:21 83:4,10,19 84:5,15,18,20 85:20 88:15,15 percentage 17:20 40:21 41:7 70:3 83:5 percentages 40:22 period 18:23 23:20 23:23 74:20 82:11
---	---	---	--

<p>permits 27:18 35:17 permitted 36:11 person 21:17 46:14 54:1 91:15 personal 12:16 13:9 personally 91:12 persons 12:11 petition 17:18 28:2 philosophy 32:21 phone 10:13,13 14:13 phrase 35:14 40:18 44:25 48:12 61:25 80:7,8 81:7 84:6 87:9 phrased 11:15 22:13 87:2 Picard 1:14 2:14 12:1 12:4,13,21 13:14 47:21 pick 69:14,15 80:7 place 34:20 52:21 75:6,18 76:7 82:9 85:14 92:12 plain 30:13 Plaintiff 1:17 Plaintiff-Applicant 1:5 plaintiff/defendant 82:16 Plaza 2:5,12,17 plead 73:10 74:12,14 pleading 72:15,22 pleadings 27:2 please 43:23 49:23 58:19 61:20,20 64:5 68:15 73:22 point 6:25 11:8 12:10 12:12 14:10 24:5 25:6 26:4 71:13 73:4 79:6 83:15 pointed 79:8 Ponzi 18:1,10,13,14 18:15,19 19:16,17 23:21 28:18 31:8,12 31:13,14 34:13,14 portion 56:21 58:25</p>	<p>portions 66:16 69:23 pose 52:15 positing 80:12 position 78:4 79:15 82:23 positive 13:14 possessed 74:21 possession 23:17 possible 11:14 65:4 potential 13:19,23 82:21 power 11:12 23:2,13 24:8 27:5 35:21 36:6,17 41:6 48:15 54:16 65:16,18 69:22 81:22 82:17 powers 23:12,22 57:3 74:4,4 practical 33:12 36:22 practice 5:1 15:10,22 62:15,17,20 precise 10:22 precisely 37:7 predicated 38:5 preexisting 20:6 prefer 22:8 preference 17:11,13 17:14 19:13,21 20:5 20:5,8,15 21:10 22:22 27:5 30:19 31:4,9,11,25 32:25 54:16 56:7,10,13 57:7,10 76:2,6 78:11 81:10 present 25:19 presented 11:17 55:2 press 18:5 23:15 24:2 presume 33:8 presumed 18:15 presumes 20:5 presumption 18:11 18:13,14 19:17 28:18 31:12 34:13 prevent 16:4 69:21 83:19,21,21 previous 63:6</p>	<p>previously 58:2 primarily 18:5 39:16 principal 5:14,16 12:10 19:5 23:1 24:7 29:5 44:22 66:3 70:13,17 prior 4:25 5:2,4 8:4 11:3 37:22 48:20 53:17 54:5,15 73:8 73:14 92:5 privilege 9:6,8,14 76:9 probably 16:22 87:9 87:10 problem 85:4 proceeding 15:4 17:24 22:15 23:6,7 24:11,13 28:12,13 31:22 55:22 82:18 82:21,22 proceedings 12:8 24:4,5 process 22:17 23:8 81:25 product 14:1 16:18 21:24 75:21,23 76:16 77:1 87:14,17 professional 12:15,17 professionally 13:8 profits 18:19 19:6 55:14 56:8,12,14,22 57:1,7 65:22 66:11 66:13 67:5 68:1 80:9 proof 72:15,22 80:22 property 17:15,16 27:9 proposal 21:22 41:16 54:6 60:11 proposals 54:2 propose 40:15 proposed 3:15 21:12 21:13 40:13,14 43:20 69:18,21 proposing 85:24 prosecution 40:9</p>	<p>protection 1:3 40:24 40:25 prove 19:9,12,15 71:18 78:13,17 80:16,19 proved 31:13 91:13 proven 73:19 provide 30:24 67:16 74:5 75:3 84:8,11 provided 30:6 provides 20:2 proving 36:20 71:25 72:5,16 provision 27:18 40:11 42:10 43:6 47:7 49:8 50:4 56:2 56:17 58:15,16 59:19 61:20,21 62:19 64:8 67:9,13 68:12 81:24 82:5 83:6,11,20 84:2,8 85:25 88:11 provision's 69:19 public 2:3 24:6 91:22 92:4,22 publicly 23:25 24:3 24:21 purports 47:4 purpose 47:8 55:23 91:17 purposes 43:22 44:10 45:15 46:3 59:3 65:9,12 pursue 65:21 66:2 70:11 80:8,13 81:18 pursuing 65:18 put 44:17 54:22 58:6 61:17 63:20 78:21 86:14 putting 42:4</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualification 86:25 qualified 88:10 qualifies 86:8 qualify 21:3</p>
---	--	---	--

qualifying 67:10,12 83:13 84:3,14,17 88:10 quality 22:1 84:24 quarrel 60:8 Queens 24:23 question 9:18 10:2,10 15:17 22:20 30:12 32:15 37:16,22 46:21 48:10 49:23 49:24 51:19,20 52:14 53:12,14 57:5 60:23 67:15,17,19 68:16 73:23 78:24 81:2 82:7,13 85:22 87:1,5,10,22 questions 20:17,20 23:9 63:19 64:12 79:8,9 quickly 45:8 82:24 quite 32:13 86:18 quote 67:10,10	really 62:12 85:8 86:16 realm 66:17 reason 16:9 23:19 41:2 50:2 54:18 83:22 90:3 reasonable 40:20 reasons 15:20,24,25 16:6 40:16 recall 11:16 14:20 36:4 38:9,19 41:15 41:22 42:8 43:7 44:25 45:2 49:6,8 49:16 53:24 54:13 58:7,8,13 60:14,15 64:25 73:24 74:22 74:24 receive 17:19 received 17:21 18:23 19:3,5 37:8 55:12 Recess 39:1 63:13 87:20 recited 19:14 recollection 17:3 60:15 65:14 80:3 recommended 9:2,9 9:11,16 75:24 record 43:8,10,22 44:11 45:15 47:3,8 51:12,12 54:13 55:1 55:11 64:2 65:9,13 68:17 69:12,16 75:9 75:16 76:11 records 24:22,23 recover 27:9 31:10 35:17 36:5 recoverable 28:20 55:16,18 recoveries 23:3,13 recovering 35:23 recovery 2:23 23:22 24:7 27:20 31:4 81:18 redeem 38:1 redemption 37:9 redemptions 37:14	37:18 38:5,8 reduced 81:17 reduction 65:20 refer 6:20 7:15,19 14:24 16:12 27:2,4 36:13 46:14 74:7 reference 27:24 48:20 72:8 referenced 7:16 39:18 references 46:13 56:16,20 referred 14:25 19:4 19:18 27:7 28:2 37:3,18 39:11 74:3 referring 19:7 26:25 28:13 35:16 37:19 37:21,24 49:21 58:4 71:20,21 84:13 refers 34:1 49:7 refund 67:16 83:21 84:9,11,21 regard 7:11 31:21 34:5 35:23 71:25 72:4,16 73:18 85:13 regarding 64:7 Regulation 12:6,7 relate 37:14 74:10 related 36:25 39:15 48:15 relates 74:11 relationship 11:3 12:13,14,18,21 13:13 29:2 relationships 13:10 40:8 relative 92:15,17 relook 62:20 remember 11:6,14,21 11:22,24 13:21 14:8 14:9 18:8,9 21:13 21:14 37:7 38:9 43:5 49:9 53:15 54:10,25 59:22,23 59:25,25 60:1 65:5 73:7,8	render 73:18 repayment 30:8 34:2 34:6,9,10 rephrase 14:4 15:18 17:1 22:5 50:14 51:21 56:6 85:11 86:14 reported 2:2 24:1,3 reporter 2:3 43:18 64:4 92:4 REPORTER'S 92:1 reports 18:5 23:15 24:2 represent 7:23 represented 36:2 59:9 67:21 representing 7:11 represents 67:20 request 16:11 required 67:16 71:16 73:19 74:11 84:8,11 85:8 requirement 70:15 requiring 83:4 84:19 resolution 11:14 resolve 33:18 resources 16:6 81:17 respect 8:9 58:9 72:22 response 3:14 16:11 45:19 rest 62:10 restructure 5:5 result 5:23 6:3 19:9 22:4 44:17 54:10 86:3 resulted 38:8 resulting 40:9 65:24 70:20 retained 49:19 50:5,7 51:14 retains 51:24 retention 8:8 return 11:11 19:4 66:3 70:12,16 review 65:15
--	--	---	---

revised 61:19	34:14	3:19 6:6,22 7:2,2,12	signature 90:1 91:2
Rich 75:11	school 20:12	9:17,20 10:4,7,12	significance 55:19
Richard 1:24 2:1 3:3	scope 43:6 69:19	10:14,24 14:16 15:1	silly 9:13
3:20 21:4 64:6 90:2	Screw 20:19	21:17 33:2 40:19	similar 40:22,23
91:1,6 92:7	seal 91:19	41:3,7 42:21 43:7	42:18 44:13 45:1
right 6:12 7:21 10:20	SEANNA 2:13	43:21 45:20 47:16	46:7 48:3 49:20
11:10 14:11 15:5	SEC 12:9	47:19,21 64:8,19,22	50:8 51:3 52:3 59:4
20:9 22:16 25:21	second 33:18 41:2	65:20,25 66:1,4	59:14 61:12,25
32:5,13,16 38:3	65:12 69:1 81:8	67:11,12 69:24	62:23 63:5,6 65:25
45:22 46:6,16 48:19	section 27:8,9,17,20	70:18,21 77:2 81:16	66:6 67:2,14,15
50:25 51:11 52:23	27:21 29:12,24 30:1	81:19 82:1,5,15	68:2,4,6,7,20,23
60:6 61:4,14 68:18	34:11 35:16 55:17	83:4,14 84:4,14,14	69:6,9 70:21 71:4,9
69:10,15 72:3,12	62:6,7 70:6,15 74:6	84:17 85:14,25 86:8	77:6,9,16 78:9
73:15 79:11 80:4,15	Sections 56:17	86:9 88:11,15	80:25 82:25 83:17
80:21 81:1 87:9,18	securities 1:3,7,15,19	settlements 40:20	84:10 87:12
rights 5:6,13	1:20 12:6 73:2	67:10	similarly 46:14
RMR 2:3	see 12:18 19:20 25:15	settler 40:17	simple 32:23
Rockefeller 2:5,12	26:22 35:9 44:7,14	settles 48:14	simply 18:9 49:9
room 76:13	46:4 47:22,24 54:6	settling 23:5 40:22	54:16 59:22
rough 57:22	57:18,23 58:6 59:6	69:22 81:10,21	single 38:18 48:16
rule 32:18	59:20 64:16 66:7	83:19 84:18 85:20	SIPA 1:14 15:4 22:15
ruled 33:8 73:24	69:13 70:25 75:13	seven 4:18 19:13	23:7 24:11,12 28:12
ruling 31:24 33:14	80:10 82:19 85:2	shareholder 4:12	28:13 55:21 73:1,3
72:4,14,17,20,24	87:5	shares 37:10 38:1	74:15 82:18
73:18 74:10,13,17	seeking 11:22,23	Sheehan 2:13 3:4 4:2	sit 33:1
74:22	seeks 23:21	4:5 19:23 26:15	situated 46:14
rulings 72:6 76:3,7,7	send 51:24 60:9,11	37:11 38:25 58:18	situation 29:7
	sense 19:25	63:12,14 75:8 76:10	six 27:25 28:1
S	sensitive 58:17	77:8 79:3,11 86:18	six-year 27:21 28:3
S 2:10 3:12	sent 24:17,19 45:19	86:21 87:18,21	29:19 32:2,25 33:23
safe 74:3,5	46:21 48:22 49:19	88:23	34:1 66:3,18,19
satisfaction 20:6	52:17 54:11 57:17	shift 25:2	68:3 69:5,20,25
satisfied 56:1	60:3,7,11 61:19	shorthand 27:1 42:19	70:16 71:25 74:20
saw 13:13 17:4 54:4	sentence 70:22 81:8	85:7	78:10
saying 53:1 61:12	separate 11:25	shorthands 85:5	Skadden 4:21 5:3
69:3 80:21 82:8	September 55:15,20	show 45:10 64:2,3	skeptical 41:19,21
85:11 87:15	57:1	74:20	Slate 4:21
says 34:10 35:8 46:7	series 48:15 63:18	showing 13:11	slight 51:6
46:8 48:2 52:3	services 30:7	shows 54:14	small 13:6
54:12,12 57:22	set 54:17 62:18 92:12	side 21:13 40:14 41:1	solid 70:5
59:14 68:12 70:23	settle 9:3 15:8 16:7	44:19 50:20 53:17	Solus 2:23
77:9,10 87:23	16:24 22:4 40:21	53:18	somebody 71:7,7
scheme 18:1,20 19:16	61:5 70:1 84:20	sides 53:16	sophisticated 20:23
19:17 23:21 28:18	settled 21:6,9 75:19	Sigma 37:9,25 38:7	62:25
31:8,12,13 34:13	76:19,21 81:25 82:8	38:19	sorry 5:2 20:1 25:7
schemer 18:15 31:14	settlement 3:15,17,18	sign 63:2	25:17 35:1,18 38:3

72:21 76:20 83:6 sounds 86:2 source 24:7 Southern 1:1 33:13 speaks 59:12 75:7 specific 8:17 10:10 58:8 specifically 14:9 44:24 54:23,25 62:13 Speculation 75:22 speculative 76:17 SPV 3:14 6:13,20,25 Square 2:21,21 staff 5:11,15 12:5 stage 24:10,10 81:4 82:16,18,20 stages 24:25 42:16 standard 71:24 standards 78:12 standing 88:3 start 10:14,24 20:20 39:24 65:12 70:22 88:6 started 16:10,14 39:21 starting 26:17 81:7 state 27:23 36:18 57:5,25 91:8,23 92:22 stated 16:10 22:3 23:12 24:21 statement 5:21 22:10 33:4 59:8 65:1 States 1:1 2:3 92:4 stating 21:8 67:21 status 24:12 statute 27:24 29:8 stenographically 92:11 step 54:8 stick 39:2 76:15 Strategic 7:3 strengths 62:4 strike 33:24 72:7 strong 70:18 88:18	stuff 9:13 Subcommittee 5:12 subject 6:9,22 14:9 14:12 18:6 40:12 75:12 submitted 79:18 subscribe 33:4 subscribed 91:15 subsequent 35:8,12 35:24 36:5,12,15,19 66:18,19 68:3 substantial 23:20 substantially 70:3 77:13 Substantively 1:14 successor 7:9 sued 76:22 sufficiently 84:10 88:12 suggest 29:15 49:5 51:13 suggesting 25:18 79:19 supervised 12:8 supposed 52:10 Supreme 33:19 sure 14:2,17 16:2 25:22 27:12 43:12 57:14 63:12 75:3 76:10 surprise 13:2 18:9 surrounding 68:10 SUS 3:14 6:13 14:24 15:2 19:3 44:12 66:1 70:9,19,24 81:19,22 susceptible 82:11,12 suspect 12:24 Swaine 2:16 4:11 sweep 85:5 sworn 4:1 92:7	27:11 33:25 35:8 82:24 83:2,16 take 38:25 43:21,21 46:1 47:2,3 51:10 63:11 68:8 71:3 77:5,15 taken 39:1 78:18 79:20 85:16 87:20 92:11 takes 31:1 85:14 talk 6:18 11:7,13 15:8 53:6,7 65:9 77:1 talked 12:18 49:15 talking 6:5 49:13 61:8 86:1 88:1 team 24:22 technically 28:14 tell 6:17 8:17 17:13 35:12 44:24 62:13 75:25 temporal 84:24 ten 4:24,24 tended 53:22 54:1 tenor 79:7 term 7:10 18:18 34:23 45:5 46:9,9 46:15 50:16 52:7 60:4 64:18 67:11 terms 33:20 35:24 38:18 61:7 71:16 77:15 79:21 testify 92:7 testifying 39:24 testimony 7:7 52:9 56:20 92:11 thank 4:7 8:15 10:16 13:17 14:19 20:9,11 21:5 31:16 75:15 88:23,24,25 thanks 81:1 thing 51:12 64:12 things 16:6 53:25 55:11 think 9:7 10:17 11:1 11:2,8,12,18 13:25	14:8 15:9 16:17 18:5 22:9 24:21 25:6,9 33:3 36:1,13 39:14,17 40:24 44:23 50:3 51:1 53:21 54:4,7 58:22 60:18 61:15 62:8,22 62:25 63:21,22 73:6 73:9 75:14 76:8 77:21 78:2,20 79:7 81:7,14 84:23 85:8 85:10 86:8,23,24 87:2,8,11,19 88:14 thinking 67:20 85:24 86:4 third 25:15 52:6 thought 20:11 41:9 42:23 51:3,5 62:14 63:4 65:2 86:17 three 5:14 27:4 29:14 45:7 51:25 time 6:21 7:1,2,12 9:1 9:12,15 12:8,18,18 13:19,23 14:5 16:5 19:20 23:20,23 26:4 33:1 40:17 43:21 46:1 47:2 53:24 71:23 80:6 82:11 86:4 92:12 Times 2:21,21 today 4:4 10:21 33:1 33:11 40:13 76:23 today's 6:23 Tolstoy-esque 26:7 26:10 tone 79:7 top 26:17,21 topic 63:16 Total 55:17 Tower 2:21 traffic 49:3,7 trained 20:23 transcript 92:10 transfer 17:14,15,22 18:15 19:15 20:6 27:9,18,23 28:18,21
---	---	--	---

28:22 31:1 34:14 35:13,18,25 36:21 56:11,16 65:22,23 66:3,10,11,18,18 67:4 70:12 71:25 73:21 74:8,8 80:9 80:10 transferee 20:14 31:1 31:5,6,9 35:19,20 35:24 36:6,7,9,9,10 36:12,15,16,19,21 68:3 71:19 transferred 27:10 transferrer 30:14 transferrers 66:12 transfers 27:6,20 35:8 37:3 55:12 57:1,11 66:13 69:20 69:23 70:5 74:6,19 transmitting 48:24 treatment 6:6 40:11 41:16 42:18 44:8,12 47:7,16,20 56:2 58:14,16 59:18 64:7 66:22 67:9,13,18 68:11 69:19 77:16 79:23 81:24 82:4,12 83:5,11,20 84:2,7 85:18 88:11 trench 16:13 tried 57:25 61:22 74:23 trigger 46:6 trouble 83:24 true 49:11 91:3 92:10 trustee 1:14 2:14 3:15 6:22 7:12 9:3 9:20 11:8,20 13:20 16:22 17:5,7 19:8 19:12 22:18 23:21 24:14 25:25 27:1,19 28:1,8,24 29:24 31:18,24 32:24 35:17,20,21 36:5,19 39:8 40:22 41:4,10 42:2,3,12,15,20	43:1 46:7 47:6 48:14,22 49:5 51:14 52:10,24 53:23 54:3 54:21 57:16 58:4,14 58:21 59:5,9,14,16 59:18 61:12,13,16 61:18 64:9,22 65:17 65:23 66:4,14 67:1 67:16 69:21 70:1,4 70:8,17,23 71:8,11 71:17 73:19 74:12 74:14,18 76:2,5 78:13,17 81:11,17 81:20 82:24 83:18 84:8,10,16,19 85:20 Trustee's 8:21 10:23 14:6,7,22 24:22 31:10 34:5 35:23 36:25 39:13,19 41:16,22,24 45:11 49:25 57:2 65:20 72:15 73:10 77:13 82:2 truth 92:8,8,8 try 14:4 15:18 17:1 75:2 86:14 trying 7:6 21:3 22:12 58:17 84:24 87:9 turn 63:15 65:6 turned 51:15 Turning 47:18 two 7:3,15 14:23 19:1 23:6,9 27:19 28:17 28:22 32:4 35:4 37:10 38:1 40:16 42:12 47:10 49:13 53:17 54:5 57:6 66:2,18,19 68:2 69:5,20 71:25 82:14 87:19,22,23 two-year 27:10,16 28:5 29:7,13,19,23 32:6 69:24 70:2,5 70:12,16 T-1 3:14 25:10,14 T-2 3:17 43:16,19	55:6 T-3 3:18 45:12,13,16 58:22 T-4 3:19 46:24,25 47:11 55:2 57:13 T-5 3:20 63:24,25 64:3 <hr/> U <hr/> u 61:8 Uh-ha 68:8 Umm 86:13 Um-hum 22:24 25:4 42:7 44:20 55:6 73:14 unauthorized 9:21 underlying 24:15 36:17 understand 6:9 7:11 8:7 10:10,20 18:18 18:22 28:6 29:1,17 30:12 36:23 37:16 37:20,22 38:11 47:9 51:20 56:6,19 58:3 60:23 78:21 79:15 82:7 84:23,24 85:8 85:10,11 88:8 understanding 13:22 15:21 18:1,4 19:10 24:12 25:23 28:7,10 29:2 34:4,16 35:12 35:22 36:24 38:4 40:4 41:25 47:10 49:18 50:1 67:22,25 72:13,20,24 74:1,2 understood 14:7 17:2 18:25 19:3 29:4 37:17 38:16 80:5 Uniform 34:12 UNITED 1:1 unqualified 88:4 use 7:10,20 40:18 41:23 84:7 useful 13:11 <hr/> V <hr/>	v 1:6,18 4:1 value 19:20,22,23 20:4,7,7 28:19 29:8 30:2,5,7,9,10,16,17 30:20,23 34:19 35:3 35:3 variations 7:9 vast 66:17 version 45:11 46:17 47:6 55:4 58:22 versus 31:18 view 13:5 36:2 virtue 7:7 <hr/> W <hr/> wait 76:4 waiting 53:14 waiver 9:14 want 6:16,18 7:10,13 7:15 8:16 10:19 16:24 20:16 22:4,5 25:2 33:21 39:4 40:18,20 45:10 54:23 64:13 65:9 69:14 71:12 85:7 wanted 25:19 58:14 58:15 59:18 61:4 81:22 warehouse 24:23 warfare 16:13 warranted 81:18 wasn't 14:2 16:25 24:9 way 11:4 14:25 16:19 22:13,21 33:9 36:13 38:22 42:11 50:13 52:25 54:3 59:11 60:25 61:17 63:3 67:8 69:23 72:2 74:25 77:3 82:13 weaknesses 62:5,5 weigh 82:4 85:17 86:24 weighs 80:24 welcome 20:10 88:25 went 86:22
---	---	--	--

weren't 12:16	year 7:22	2008 55:16,20 57:2	30:16 70:6,15 72:11
we'll 14:1 55:10 79:2	years 4:18,24,24,25	2009 7:22 11:21	550 27:9,20 55:17
we're 6:5 10:21 20:13	5:3,14 6:2 27:19,25	14:15 17:23 75:13	550(a)(2) 35:16
63:16,18,22 76:14	28:1,17,23 32:4	76:7	
78:1 86:2 88:24	49:10,17 58:7 62:16	2014 1:25 2:6 72:18	6
we've 17:2 19:1 39:6	yo 61:8	75:13 92:24	6 44:4
46:19,19 88:1	York 1:1 2:4,5,6,12	21(b) 65:6 79:16	60 37:2
whatsoever 52:25	2:12,18,18,22,22	21(d) 69:11	63 3:20
willfully 73:6	27:24 33:13 34:12	21(e) 81:3 85:13	7
wired 24:20	92:4,22	25 3:16	7 2:21 17:22
withdraw 48:9		3	8
withdrawals 14:23	\$	30 37:5	80 21:20
15:2 23:20,23	\$100 59:16	35 62:16 70:11	825 2:17
witness 3:2 14:2	\$25 55:13	36 6:2	85 21:7,10,12,15 70:2
20:25 46:23 76:12	0	4	70:4 81:21 83:4,10
86:10,12 88:25 90:2	08-01789(SMB) 1:4	4 3:4 25:13 45:18	83:19 84:5,15,18,20
word 8:13 41:23,24	09 14:21 16:8 24:13	58:10 66:25	85:20
41:24 48:6,8,17	32:10,24 33:7 40:10	4th 47:14,14	9
words 11:15 30:24	71:16 75:6,17 77:14	4/13/09 3:17	9 62:1
38:6 48:9 51:1,11	1	40 62:16,16 84:4,14	9th 47:15
73:6 80:1	10 12:8	43 3:17	90 15:3 17:17 26:24
work 5:14,20 8:4	10-4932(SMB) 1:14	45 2:5,12 3:18 88:15	27:6 28:11 37:4
13:10 14:1 16:18	10:57-11:05 63:13	46 3:19	55:21 56:10
21:23 75:21,22	100 59:25	5	90-day 18:23 29:18
76:16,25 82:15	10019 2:18	5/04/09 3:18	37:3 65:22 66:10,13
87:14,16	10036 2:22	50 88:15	66:16 67:4 68:1
worked 5:18,18 8:1	10111 2:12	541(a)(1)(A) 74:12	69:24 70:1 80:9
13:7	11 16:9 55:15,20 57:2	544 55:17 56:17	
working 5:3	11:06 2:7	544(b) 27:22 29:25	
works 85:9	11:42 89:2	34:11	
Worldwide 2:17	12 44:5 45:24	546 32:6 73:17	
wouldn't 13:2 18:8	12(b) 55:8,12,24 56:3	546(c)(2) 31:13	
50:11 52:23 66:20	57:6	546(e) 31:21 71:13,20	
writing 5:8,15 50:19	13 45:24 47:25 58:10	71:22,23 72:1,8	
50:22	58:25 62:1 65:11	73:17,20 74:2,10,19	
written 26:13,13 43:8	66:25	547 27:8 55:17 56:20	
43:10 55:1 67:5	13(c) 87:25	547(c) 31:12	
wrong 33:5 87:8	15 81:6	547(c)(2) 20:2 30:25	
X	16 1:25 2:6 4:25 5:3	548 29:25,25 55:17	
x 1:2,9,13,21 3:1,12	17 92:24	56:18,20 71:13	
Y	19 64:11,14	548(a)(1) 27:17	
YAW 2:19	1975 5:13	548(a)(1)(A) 32:6	
yeah 13:1 14:2 19:23	1978 5:13	70:6 72:9 74:7	
58:12 59:17	2	548(c) 29:12 30:1,10	